BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)
)
YOUNG BROTHERS, LIMITED)
)
For Approval of a General Rate)
Increase, Rate Restructuring, Fuel)
Price Adjustment Clause, and Other)
Tariff Changes.)

DOCKET NO. 2006-0396

DECISION AND ORDER NO. 23714

Filed Oct. 12, 2007

At 1 o'clock P .M.

Karen Higashi

Chief Clerk of the Commission

TABLE OF CONTENTS

		Page
I.	BACKGROUND	
	A. Young Brothers	2
	B. Docket No. 01-0255	5
	C. Young Brothers' Application	8
	D. Protest, Reply, and Suspension	10
	E. Public Hearing Process	11
	F. Waiver of the Six-Month Deadline for Issuance of the Commission's Final Order	12
	G. Written Testimonies	13
	H. Parties' Stipulation and Waiver of Hearing	14
	I. Issues	16
II.	DISCUSSION	17
	A. Parties' Stipulation	20
	1. Terms and Conditions	20
	2. Summary	22
	B. Economic Inflators and the Cost of Service Model/Allocation Factors	25
	C. Operating Revenues	29
	D. Operating Expenses	32
	1. Cargo Handling and Maintenance Department	35
	2. Voyaging	38
	3. Administrative and General	43
	4. Taxes Other Than Income Taxes	44
	5. Depreciation	45
	E. Income Taxes	46
	F. Rate Base	46
	1. Net Plant-in-Service	48
	2. Materials and Supplies Inventory	49
	3. Accumulated Deferred Income Taxes	50
	4. Hawaii State Capital Goods Excise Tax Credit	52
	5. Working Cash	53
	G. Rate of Return	55
	H. Rate Design	60
	I. Fuel Price Adjustment Clause	63
	J. Other Tariff Changes	67
	1. Non-Substantive Tariff Changes	68
	2. Island Agricultural Product	68
	3. Automobiles	69
	4. Storage Fees	71
	5. Increase in the Minimum Charge Per Bill of Lading	72
	6. Increase in the Minimum Charge for Platforms	73
	K. Commission's Approval	74

	Page
III. SUMMARY OF FINDINGS AND CONCLUSIONS	75
IV. ORDERS	76

Exhibits I and II
Parties' Exhibits C to E

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)) YOUNG BROTHERS, LIMITED)) For Approval of a General Rate) Increase, Rate Restructuring, Fuel) Price Adjustment Clause, and Other) Tariff Changes.))	Docket No. 2006-0396 Decision and Order No. 23714

DECISION AND ORDER

By this Decision and Order, the commission approves an increase in intrastate freight revenues of $4,391,105, or approximately 7.51 percent over intrastate revenues at present rates, for YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB"), based on a rate of return of 10.76 percent and a total intrastate revenue requirement of $68,893,418 for the 2007 calendar test year ("Test Year").[1] In so doing, the commission approves the Stipulation on Settlement of All Issues in This Proceeding jointly filed by the Parties on July 20, 2007 (the "Stipulation"), as further supported by the Joint Supplement to Stipulation on Settlement of All Issues in this Proceeding of Young Brothers, Limited and the Division of Consumer Advocacy, Attachments A - B, jointly filed by the Parties on September 19, 2007 (the "Joint Supplement").

[1]The "Parties" as used herein are Young Brothers and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate" or "CA"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

Specifically, the commission approves: (1) rate increases in the container, straight-load racks, automobiles, and less than container load ("LCL") cargo categories, at various percentages; (2) the implementation of a fuel price adjustment clause, commonly known as a fuel surcharge; and (3) other changes to Young Brothers' tariff, as discussed in Section II.J of this Decision and Order, below.

I.

Background

A.

Young Brothers

Young Brothers is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. Young Brothers provides interstate and intrastate water carrier transportation services, and its intrastate water carrier operations are subject to the commission's jurisdiction.[2] The intrastate shipment of goods under its regulated water carrier service is governed by its Local Freight Tariff No. 5-A ("Tariff 5-A").

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[2]According to Young Brothers, its interstate market consists largely of connecting carrier agreements with Horizon Lines and Matson Navigation Company to carry interstate cargo originating on the liner vessels of these two interstate water carriers with a transfer to Young Brothers' barges at Honolulu Harbor, for shipment to a neighbor island port. Young Brothers' transport of interstate cargo from Honolulu Harbor to the neighbor islands primarily consists of containerized cargo and automobiles. See YB's Application, at 20; and YB-DT-400, at 10; see also Matson Navigation Co. v. Hawaii Public Util. Comm'n, 742 F.Supp. 1468 (D. Haw. 1990) (continuous movement through interstate commerce standard).

Presently, there are twelve scheduled departures weekly from Honolulu Harbor that serve the neighbor island ports.[3] However, "YB regularly sails more frequently due to growth in neighbor island cargo volumes."[4] Cargo transported by Young Brothers on an intrastate basis includes mixed, palletized, and containerized cargo, as well as automobiles and other roll-on, roll-off ("RO/RO") cargo.[5] Interstate cargo and intrastate cargo are normally commingled on Young Brothers' barges, in order to minimize the costs to its shippers.

Young Brothers is affiliated with Hawaiian Tug & Barge ("HTB"), a sister entity.[6] Young Brothers and HTB are wholly-owned subsidiaries of Marine Resources Group, Inc. ("MRG"), a holding and support company for investments in tug, barge, and ancillary marine services companies.[7] MRG, in turn,

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[3]The neighbor island ports consist of: (1) Hilo Harbor and Kawaihae Harbor, island of Hawaii; (2) Nawiliwili Harbor, island of Kauai; (3) Kaumalapau Harbor, island of Lanai; (4) Kahului Harbor, island of Maui; and (5) Kaunakakai Harbor, island of Molokai.

[4]Application, at 3; <u>see also</u> YB-DT-400, at 10 ("YB will also provide occasional special sailings generally carrying interstate cargoes, but increasingly to accommodate [intrastate] volumes.")

[5]In general, mixed cargo is packed into YB-owned containers (small containers known as G-vans or standard-size containers), while palletized cargo is loaded, using small lifts, onto YB-owned flatracks and platforms. Once mixed cargo and palletized cargo are loaded into containers, or onto flatracks or platforms, "it is treated similarly to cargo delivered in a container. It is loaded aboard a barge using a large lift and stevedores provide various services to secure and service the cargo (for refrigerated cargo)." YB-DT-400, at 11 (quoting YB-DT-600, at 7).

[6]Based on the docket record, it appears that HTB assesses a fuel charge. <u>See</u> Joint Supplement, Attachment B, at 30; and Young Brothers' response to CA-IR-09.

is a wholly-owned subsidiary of Saltchuk Resources, Inc. ("Saltchuk"), a privately-held corporation.[8] Neither Young Brothers nor MRG hold any debt. Instead, all of their capital is provided by Saltchuk, its parent entity.[9]

Young Brothers explains that it is in the process of implementing a ten-year strategic recapitalization plan "that includes an approximately $186 million investment in its next generation of water transportation equipment and infrastructure for the purpose of making necessary improvements to cargo transportation, developing needed additional cargo capacity, and enhancing customer service[,]" including "the acquisition of up to eight new barges, six tugboats, containers, cargo handling equipment, and freight information systems . . . to benefit its customers throughout the State."[10] Young Brothers states that its ten-year strategic plan complements its collaborative efforts with other harbor users and the State of Hawaii ("State"), Department of Transportation, to meet the cargo transportation needs of the State, including the increase in harbor (land side) cargo capacity. Specifically, Young Brothers plans to:

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[7]Young Brothers' responses to CA-IR-62, CA-IR-66, CA-IR-69, and CA-IR-70; see also In re Young Bros., Ltd., Saltchuk Resources, Inc., and Marine Resources, Inc., Docket No. 00-0359, Decision and Order No. 18348, filed on January 30, 2001 (approving the transfer of Young Brothers' stock from Saltchuk to Marine Resources, Inc.).

[8]Young Brothers' responses to CA-IR-66, CA-IR-69, and CA-IR-70; see also In re Hawaiian Tug & Barge Corp., Young Bros., Ltd., and Saltchuk Resources, Inc., Docket No. 99-0231, Decision and Order No. 17283, filed on October 20, 1999 (approving the sale and transfer of Young Brothers' stock from HTB to Saltchuk).

[9]Young Brothers' response to CA-IR-70.

[10]Application, at 18.

(1) reconfigure, expand, and improve harbor facilities in Honolulu, Kawaihae, and Kahului; and (2) develop a new Hilo pier.

Young Brothers contends that its ten-year strategic plan and its collaborative efforts to develop adequate harbor (land side) cargo capacity are based on: (1) the substantial growth in cargo; and (2) the need to meet the projected growth in cargo. Thus, Young Brothers states that: (1) as part of its ten-year strategic plan, beginning in 2006 and continuing through 2015, it is committed to bringing on-line modernized vessels and equipment to facilitate the flow of cargo in Hawaii's economic stream; and (2) to sustain this commitment, its financial viability requires a just and reasonable return on its investments. Upon the completion of its ten-year strategic plan, Young Brothers estimates that its "tug fleet age will be reduced from a current average of 25 years to 10 years by the year 2015 and its barge fleet will be reduced from a current average of 26 to 7 years by the year 2015[.]"[11]

B.

Docket No. 01-0255

On December 20, 2001, the commission, in In re Young Bros., Ltd., Docket No. 01-0255, approved a Stipulation Regarding Young Brothers' Application for Rate Flexibility Within a Reasonable Zone, filed by Young Brothers and the Consumer

[11]Application, at 22.

Advocate.[12] In approving the stipulation, the commission authorized Young Brothers to utilize a zone with a maximum annual increase of 5.5 percent and a maximum annual decrease of ten percent over a twelve-month period ("Zone") under a three-year pilot program, subject to certain conditions. The commission also instructed Young Brothers to file a cost of service study utilizing its 2001 financial information and operating data:

> a. The cost of service study will be based on 2001 operating data and will include the current costs of providing each cargo category, and a <u>breakdown between regulated and non-regulated revenues, expenses and plant investment</u>. The study will also set forth rates that would be necessary for each tariff rate to be fully compensatory.
>
> b. The cost of service study should also enable the parties to ascertain the level of change in the existing rates that would be necessary for [Young Brothers] to have fully compensatory rates for each of its cargo offerings.
>
> c. For each of the second and third years of the three-year pilot program, YB also agrees to file the then approved cost of service study under protective order by June 30 of the following year, to reflect the prior year's results. This filing will include a <u>breakdown between regulated and non-regulated revenues, expenses, and plant investment</u>, and should enable the parties to determine the contribution margin of each of the then existing tariffs, based on current operations.

Docket No. 01-0255, Decision and Order No. 19115, at 6-7 (emphasis added).

[12]Docket No. 01-0255, Decision and Order No. 19115, filed on December 20, 2001. Docket No. 01-0255 is extensively discussed in Order No. 23222, filed on January 26, 2007, in this proceeding.

On June 28, 2002, Young Brothers filed its 2001 cost of service study, and on June 12, 2003, Young Brothers and the Consumer Advocate filed a settlement agreement. On September 19, 2003, the commission found that Young Brothers' 2001 cost of service study, as modified by the parties' settlement agreement, was just and reasonable and appeared to represent a fair allocation between Young Brothers' interstate and intrastate operations. Accordingly, the commission approved Young Brothers' 2001 cost of service study, as modified by the parties' settlement agreement.[13]

The commission, in Order No. 20454, explained the need to properly allocate Young Brothers' costs between its intrastate and interstate operations, as follows:

> The purpose of the [cost of service study] is to distribute the costs incurred to provide the utility service across all revenue categories to determine the rates that would provide an opportunity to earn the authorized return on investment (i.e., the rate of return). Ideally, the rates for each revenue source should be cost based, resulting in an equal contribution to the authorized rate of return.
>
> YB's present rates are not cost based . . . . Thus, further rate rebalancing must occur to achieve the desired result of having cost based rates.
>
> The cost of service model is intended to distribute the costs of providing service, and the investment utilized in providing the service, across all service offerings for purposes of developing cost based rates. <u>If the allocation factors do not result in an appropriate distribution of the costs and/or investment, the resulting rates will not be reflective of cost based rates. Since YB provides both interstate</u>

[13]Docket No. 01-0255, Order No. 20454, filed on September 19, 2003.

> and intrastate service, a proper distribution of costs and investment must first be made between [Young Brothers'] regulated (i.e., intrastate) operations and its non-regulated (i.e., interstate) operations.

Docket No. 01-0255, Order No. 20454, filed on September 19, 2003, at 5-6 (emphasis added).

On April 22, 2005, the commission approved: (1) an updated stipulation, which effectively extended the Zone for an additional three years, until December 20, 2007; and (2) the 2002 and 2003 cost of service studies submitted by Young Brothers.[14]

C.

Young Brothers' Application

On October 2, 2006, Young Brothers filed its Notice of Intent to file an application for approval of a general rate increase and for certain revisions to its Tariff 5-A.[15]

On December 15, 2006, Young Brothers filed its Application requesting the commission's approval of an average, overall rate increase of 10.7 percent for certain types of cargo, based on the 2007 calendar Test Year and a proposed rate of return of 10.84 percent for its intrastate water carrier

[14]Docket No. 01-0255, Decision and Order No. 21768, filed on April 22, 2005. Consistent with Order No. 20454, the commission found that Young Brothers' 2002 and 2003 cost of service studies were "just and reasonable, as they both appear[ed] to represent a fair allocation between YB's interstate and intrastate operations." Id. at 5.

[15]Young Brothers' Notice of Intent and Certificate of Service, filed on October 2, 2006.

operations.[16] For the specific cargo types, Young Brothers proposes rate increases ranging from 0 to twenty-four percent.[17] Young Brothers also seeks to increase its minimum bill of lading by twenty-four percent. In essence, Young Brothers proposes to restructure its rates to move toward compensatory pricing.

As part of its Application, Young Brothers also proposes to establish: (1) a fuel price adjustment clause for its intrastate operations if the price of diesel fuel increases or decreases by $0.15 above or below the per-gallon base level included in its base rates upon thirty days' notice, with prices reconciled on a quarterly basis;[18] and (2) a minimum charge for twenty-foot and forty-foot platforms. In addition, Young Brothers proposes certain changes to its tariff language,

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[16]Application of YB for Approval of a General Rate Increase, Rate Restructuring, Fuel Price Adjustment Clause and Other Tariff Changes in Local Freight Tariff No. 5-A, Exhibits YB-Ex-1 to YB-Ex-13; Direct Testimonies YB-DT-100 to YB-DT-800; Verification; and Certificate of Service, filed on December 15, 2006, as amended and supplemented on February 7 and 27 and March 12, 2007 (collectively, "Application"). Young Brothers filed its Application pursuant to HRS §§ 271G-16 and 271G-17, and HAR § 6-61-94, and served copies of its Application upon the Consumer Advocate.

[17]Specific examples of Young Brothers' proposed rate increases include:

Dry containers and non-automobile RO/RO cargo	No increase
Refrigerated containers (reefers), automobiles, straight load flat racks and platforms	5.6% increase
LCL cargo, refrigerated pallets, dry and refrigerated mix cargo, and G-vans	24% increase

[18]Young Brothers already applies a fuel surcharge for its interstate operations. See Young Brothers' response to CA-IR-78a.

including revisions to the definitions of "automobile" and "island agricultural products." The revisions to Tariff 5-A proposed by Young Brothers to effectuate its requested changes are set forth in Exhibit YB-Ex-1 of its Application.

D.

Protest, Reply, and Suspension

On January 12, 2007, the Consumer Advocate filed its Protest, recommending that the commission deny Young Brothers' Application, without prejudice.[19] On January 22, 2007, Young Brothers filed its Reply to the Consumer Advocate's Protest, requesting that the commission accept its Application for full consideration and investigation.[20]

On January 26, 2007, the commission suspended Young Brothers' Application and instituted this proceeding to examine the merits of Young Brothers' requests.[21] The commission also stated its intent to hold statewide public hearings on the requests set forth in Young Brothers' Application, and instructed the Parties to submit a proposed stipulated prehearing order for the commission's review and consideration.

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[19]Consumer Advocate's Protest and Certificate of Service, filed on January 12, 2007 (collectively, "Protest").

[20]Young Brothers' Reply to the Consumer Advocate's Protest; and Certificate of Service, filed on January 22, 2007, as supplemented on January 23, 2007 (collectively, "Reply").

[21]See Order No. 23222, filed on January 26, 2007; and Order No. 23311, filed on March 16, 2007.

E.

Public Hearing Process

Notices of Public Hearings were published in various newspapers statewide.[22] In addition, Young Brothers posted and distributed copies of the Notices of Public Hearings at each of its port locations statewide, pursuant to the commission's directive.[23]

The commission held public hearings on February 13, 2007 (Honolulu, Oahu), February 14, 2007 (Hilo, Hawaii), February 15, 2007 (Kona, Hawaii), February 27, 2007 (Lihue, Kauai), February 28, 2007 (Kahului, Maui), March 1, 2007 (Kaunakakai, Molokai), and March 2, 2007 (Lanai City, Lanai). In addition to representatives from Young Brothers and the Consumer Advocate, other interested persons appeared and testified at the public hearings.[24] The commission also received written comments from various individuals and organizations.[25]

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[22]Specifically, Notices of Public Hearings were published in The Garden Island, Hawaii Tribune-Herald, Honolulu-Star Bulletin, The Maui News, and West Hawaii Today. See Commission letter, dated January 26, 2007, transmitting copies of the Notices of Public Hearings to the Parties.

[23]See Order No. 23222, Ordering ¶ 2, at 41; and Young Brothers' letter, dated February 7, 2007, submitting the written declarations of compliance from each of its port managers.

[24]Specifically, the commission received: (1) oral and written testimonies from the Maui County Farm Bureau, the Hawaii Farm Bureau Federation, and the Maui Chamber of Commerce, at the Maui public hearing; (2) oral testimonies (no written) by various businesses and one individual at the Maui public hearing; (3) oral and written testimonies from the Molokai Chamber of Commerce and Kualapuu Market, Ltd., at the Molokai public hearing; (4) oral testimonies from various individuals and businesses at the Molokai public hearing; and (5) oral testimonies from two individuals at the Lanai public hearing.

F.

Waiver of the Six-Month Deadline for Issuance of the Commission's Final Order

HRS § 271G-17(d) provides that from the date of the commission's order suspending for a hearing and investigation Young Brothers' request for rate relief, "the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect."[26]

Notwithstanding the six-month deadline set forth in HRS § 271G-17(d) and HAR § 6-65-40(c) governing the commission's timely issuance of its final order in this proceeding, the Parties, on February 16, 2007, submitted their proposed Stipulated Prehearing Order for the commission's review and consideration. As part of their joint filing, the Parties affirmatively waived the six-month deadline for the commission's issuance of its final order by July 26, 2007, and instead, requested that the commission issue its final decision by August 31, 2007.[27]

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[25]Specifically, the commission received written comments from Chambers & Chambers Wine Merchants; a Councilmember from the County of Maui; Gammie HomeCare; HCD Corp.; the Governor's Molokai Council of Advisors; the Made in Maui Trade Council; the Molokai Chamber of Commerce; the Molokai Extension Agent; and United Rim Transport, Inc.

[26]See also HAR § 6-65-40(c) (tariff suspension for up to six months from the date of the commission's suspension order).

[27]Since the commission issued its suspension order on January 26, 2007, the six-month deadline for the commission to issue its final order was July 26, 2007.

On March 16, 2007, the commission approved the Parties' waiver of the six-month deadline for the commission's issuance of its final order by July 26, 2007.[28]

G.

Written Testimonies

On April 23, 2007, the Consumer Advocate filed its Direct Testimonies and Exhibits, recommending that the commission deny Young Brothers' request to increase its rates.[29] In the alternative, the Consumer Advocate recommended that any increases in Young Brothers rates be evenly implemented across-the-board.[30] On May 29, 2007, as supplemented on June 1, 2007, Young Brothers filed its Rebuttal Testimonies and Exhibits.[31] In its rebuttal testimonies, Young Brothers essentially reiterated that the requested relief set forth in its Application should be approved without change.[32]

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[28]Order No. 23311, filed on March 16, 2007.

[29]Consumer Advocate's Direct Testimonies; Exhibits; and Certificate of Service, filed on April 23, 2007.

[30]The Consumer Advocate's Exhibit CA-101 consists of its projected Test Year estimates, and reflects, in essence, the Consumer Advocate's alternative position.

[31]Rebuttal Testimonies and Exhibits of Young Brothers; and Certificate of Service, filed on May 29, 2007; and Corrections to Rebuttal Testimonies and Exhibits of Young Brothers; and Certificate of Service, filed on June 1, 2007.

[32]<u>See</u> Young Brothers' response to CA-RIR-6.

H.

Parties' Stipulation and Waiver of Hearing

In June 2007, the Parties commenced negotiations on the possible settlement of some or all of the issues in this proceeding.[33] On June 28, 2007, the Parties informed the commission that they had settled, in principle, all of the issues, and as a result, affirmatively waived the evidentiary hearing, scheduled to commence on July 5, 2007.[34] On July 2, 2007, the commission approved the Parties' waiver of the evidentiary hearing.[35]

On July 20, 2007, the Parties filed their Stipulation.[36] On August 3, 2007, the Parties jointly filed their responses to the commission's clarifying information requests. On September 4, 2007, the commission, by Order No. 23625, instructed the Parties to jointly submit a supplemental filing, as follows:

> Upon thorough review, the commission finds that the Parties' justification and evidence in support of the stipulated revenue requirements (revenues, expenses, rate base, and rate of return) are incomplete and lacking. Thus, the commission, at this juncture, is unable to complete its independent review to determine

[33]See Joint Supplement, Attachment B, at 6 and 50.

[34]Parties' letter, dated June 28, 2007. The evidentiary hearing, initially scheduled to commence on July 2, 2007, was re-scheduled to July 5, 2007. See Notice of Evidentiary Hearing, dated June 12, 2007; and Order No. 23504, filed on June 22, 2007.

[35]Order No. 23532, filed on July 2, 2007.

[36]The commission approved several requests for extensions of time, ultimately until July 20, 2007, for the Parties to file a settlement agreement. See Order No. 23311, filed on March 16, 2007; Order No. 23504, filed on June 22, 2007; Order No. 23532, filed on July 2, 2007; and Stipulated Order No. 23542, filed on July 12, 2007.

> whether the stipulated amounts for each of the accounts or categories as well as the stipulated increases in Young Brothers' rates, fares, and charges are just and reasonable and consistent with the public interest. Accordingly, the commission hereby instructs the Parties to jointly submit, by September 28, 2007, a supplemental filing that fully explains and provides the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in their Stipulation are just and reasonable.

Order No. 23625, at 10.

On September 19, 2007, the Parties, in response to Order No. 23625, filed their Joint Supplement. The Joint Supplement, signed by both Parties, includes two attachments, Attachments A and B. Attachment A, Summary of Supporting Bases Supplementing the Parties' Stipulation, summarizes the additions made to the Stipulation. Attachment B consists of: (1) a "mock-up" to the Stipulation "black-lining how the supporting bases summarized in Attachment A would have been incorporated into the original Stipulation", essentially noting in black-line format the supplemental information to support the Stipulation agreed-upon by the Parties; and (2) Exhibits A through H. As explained by the Parties, "[b]y signing this Joint Supplement to Stipulation, the Parties do hereby agree, as mutually acceptable to each, to supplement their Stipulation with the information set forth in Attachment A <u>as though such information had been included in the Stipulation as set forth in Attachment B</u>."[37]

[37]Joint Supplement to Stipulation, at 2 (emphasis added). In effect, while the Parties signed the Joint Supplement to Stipulation but did not sign Attachment B, the Parties agree "to supplement their Stipulation with the information set forth in

I.

Issues

As set forth in Exhibit 1 of Order No. 23311, the issues in this proceeding, as agreed-upon by the Parties, are:

1. Whether the general rate increase, rate restructuring, fuel price adjustment clause, and other changes to Young Brothers' Tariff 5-A, as proposed in its Application, are just and reasonable, not unjustly discriminatory, and do not make, give, or cause any undue or unreasonable preference, prejudice, or advantage to any particular person, locality, region, district, island, or description of traffic.

2. Whether the proposed tariff changes support the need, in the public interest, for adequate and efficient transportation service.

3. Whether the proposed tariff changes enable Young Brothers, under honest, economical, and efficient management, to provide transportation services.

Attachment B as though such information had been included in the Stipulation[.]" Thus, in this Decision and Order, the commission, reviews whether the Stipulation, as further supported by the Joint Supplement should be approved by the commission. As hereinafter used, the term "Stipulation" shall mean the Stipulation as further supported by the Joint Supplement.

II.

Discussion

HRS § 271G-16 provides in relevant part:

> **Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers . . . .
>
> (b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.
>
> (c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.
>
> (d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by

water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16 (boldface in original).

HRS § 271G-17 states in relevant part:

Tariffs of water carriers. (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend

> the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.
>
> (e) When a rate increase application is filed, ...

HRS § 271G-17 (boldface in original) (emphasis added). See also HAR §§ 6-61-94 (water carrier tariff changes); 6-65-5 (water carrier tariff change - posting); and 6-65-30 (water carrier tariff changes or revisions).

A.

Parties' Stipulation

1.

Terms and Conditions

The Stipulation reflects the Parties' global settlement of all issues. In reaching their global agreement, the Parties note:

1. The Stipulation, binding between them, "represent[s] compromises by the Parties to fully and finally resolve all issues for the purpose of simplifying and expediting this proceeding, and are not meant to be an admission by either of the Parties as to the acceptability or permissibility of matters agreed to in this Stipulation."[38]

[38] Joint Supplement, Attachment B, at 8.

2. "The Parties reserve their respective rights, in other dockets or proceedings, to proffer, use, and defend different positions, arguments, methodologies, or claims regarding the matters agreed to in this Stipulation."[39]

3. The Parties stipulate to the various revenue and rate components and matters discussed in the Stipulation, without necessarily agreeing on the underlying methodologies or justifications asserted by the other party. "Furthermore, the Parties agree that nothing contained in this Stipulation shall be deemed, or be interpreted, to set any type of precedent, or be used as evidence of either's party's position in any future regulatory proceeding involving the Parties or any other party, except as necessary to enforce this Stipulation."[40]

4. Each provision of the Stipulation is in consideration of all other provisions, and is expressly conditioned upon acceptance by the commission of the matters expressed in this Stipulation in their entirety.

   "In the event the Commission declines to adopt parts or all of the matters agreed to by the Parties and as set forth in this Stipulation, the Parties reserve the right to pursue any and all of their respective positions through further negotiations and/or additional filings and proceedings before the Commission."[41]

Ultimately, the Parties acknowledge that the Stipulation is subject to the commission's review and approval, and that the commission is not bound by the Stipulation.

In this regard, it is well-settled that an agreement between the parties in a rate case cannot bind the commission, as the commission has an independent obligation to set fair and just rates and arrive at its own conclusion. In re Hawaiian Elec.

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[39]Joint Supplement, Attachment B, at 8.

[40]Joint Supplement, Attachment B, at 8-9.

[41]Joint Supplement, Attachment B, at 63.

Co., Inc., 5 Haw. App. 445, 698 P.2d 304 (1985). With this mandate, the commission proceeds in reviewing whether the Parties' Stipulation appears just and reasonable, taken as a whole. Consistent with the Parties' disclaimers, the Parties are cognizant that the commission has stated:

> In our analysis below, we state from time to time that the estimates agreed to by the parties are reasonable or acceptable. We caution that these statements do not necessarily constitute commission approval of the methodology by which the estimates were derived, and that we will not be bound by the stipulated estimates in future rate cases.

In re Young Bros., Ltd., Docket No. 94-0059, Decision and Order No. 13680, filed on December 12, 1994, at 6-7.

2.

Summary

The Parties commenced their analysis of Young Brothers' Test Year revenue requirement with a review of Young Brothers' consolidated interstate and intrastate operations, otherwise known as Young Brothers' total company operations. This approach, the commission notes, is consistent with the commission's past approval of the ratemaking methodology that utilizes "total company revenues, expenses, and rate base as proxies for YB's intrastate operation."[42]

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[42] In re Young Bros., Ltd., Dockets No. 7398 and No. 7506 (consolidated), Decision and Order No. 12479, filed on June 30, 1993 (1993 - 1994 split test year rate case); see also In re Young Bros., Ltd., Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997 (1997 test year rate case); In re Young Bros., Ltd., Docket No. 96-0079, Decision and Order No. 15228, filed on December 12, 1996 (1996 test year rate case); and In re Young Bros., Ltd., Docket No. 94-0059, Decision and

The Parties then agreed on a cost of service model to serve as the basis for allocating Young Brothers' revenues, expenses, and rate base between its interstate and intrastate operations, in order to determine the reasonableness of the water carrier's request to increase its intrastate freight rates.

After agreeing on the amounts for Young Brothers' Test Year operating revenues, expenses, and rate base at present rates, for its interstate and allocated intrastate operations, the Parties then reached agreement on Young Brothers' rate of return.

Thus, Exhibit A of the Joint Supplement to the Stipulation sets forth Young Brothers' consolidated (interstate and intrastate) Test Year results of operation and its intrastate revenue requirement. In sum, as set forth in the Parties' Exhibit A:

1. Young Brothers' consolidated operations (interstate and intrastate) reflect, at present rates, $93,104,436 in operating revenues, $84,063,773 in operating expenses, $3,517,704 in income taxes, and $64,108,891 in average depreciated rate base.

2. Based on the results of the agreed-upon cost of service model, Young Brothers' intrastate operations, at present rates, consist of $64,502,313 in operating revenues, $61,038,841 in operating expenses, $1,347,630 in income taxes, and $44,866,809 in rate base.

Order No. 13680, filed on December 12, 1994 (1994 - 1995 split test year rate case).

3. The Parties stipulate to a 10.76 percent rate of return for Young Brothers' intrastate operations.

4. In order to provide Young Brothers with the opportunity to earn the stipulated 10.76 percent return on rate base, "the overall rate increase in this docket must produce $4,391,105, or approximately 7.51 percent, of additional [freight] revenues, resulting in a revenue requirement of $68,893,418 for the Test Year. The stipulated [intrastate] revenue requirement of $68,893,418 is based on $61,038,841 in total operating expenses and $3,056,200 in income taxes, and is expected to produce $4,798,377 in net income[,] which represents a 10.76 percent rate of return on [Young Brothers'] stipulated rate base amount of $44,606,597."[43]

After stipulating to the matters relating to Young Brothers' revenue requirement, as reflected in Exhibit A of their Stipulation, the Parties then agreed on a rate design that provides Young Brothers with the reasonable opportunity to earn its stipulated rate of return. Lastly, the Parties came to agreement on the other tariff changes proposed by Young Brothers, including the water carrier's proposal to establish a fuel price adjustment clause.

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[43]Joint Supplement, Attachment B, at 10 (footnote and text therein omitted). The percentage increase of 7.51 percent represents the increase in Young Brothers' intrastate freight revenues of $4,391,105, over its intrastate operating revenues at present rates of $58,483,422. Thus, $4,391,105 divided by $58,483,422 = 7.51 percent. See Parties' Exhibit A, page 1.

B.

Economic Inflators and the
Cost of Service Model/Allocation Factors

The Parties stipulate to applying a three percent economic inflator in forecasting certain of Young Brothers' Test Year operating revenues at present rates.

The Parties emphasize that their "agreement to use a 3 percent economic inflator is not meant, with respect to either of the Parties, (1) to reflect any agreement between the Parties as to acceptability or permissibility of using an economic inflator for purposes of determining the Test Year revenue projections at present rates, (2) to set any precedent, especially regarding the appropriateness of using an economic inflator to project any of the Test Year revenue requirement elements, or (3) to serve as evidence of either party's position in any future proceedings. Nonetheless, the Parties agree to use an economic inflator to project revenues in light of prior Commission decisions accepting as reasonable revenue projections based on economic inflator methodologies."[44]

As additional support, the Parties further note that "[t]he negotiated figure for the [three percent] economic inflator [is] within the range of growth rate forecasts . . . made at the time of settlement discussions (*see, e.g.*,

[44]Joint Supplement, Attachment B, at 15-16. The Parties specifically cite to In re Young Bros., Ltd., Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997, at 4-10 (in previous rate case proceedings for Young Brothers, the commission recognized the high correlation between Young Brothers' general freight revenues and the real Gross State Product ("GSP") forecast, and accepted the use of the GSP to project Young Brothers' general freight revenues).

Dr. Leroy O. Laney's economic analysis in First Hawaii[an] Bank's *Economic Forecast*, 2006-2007 edition, and the [State Department of Business, Economic Development and Tourism's ("DBEDT")] 'Outlook of the Economy, 4th Quarter 2006[.']"[45]

The Parties also stipulate to utilizing a three percent inflationary factor to forecast certain of Young Brothers' Test Year operating expenses at present rates.[46] Concomitantly, "[i]n agreeing to stipulate on this matter, the Consumer Advocate does not concede to the premise that it is reasonable to use a general inflator, such as the CPI, in any ratemaking proceeding without sufficient justification to demonstrate a correlation between the CPI and changes in the expenses to which the CPI is applied. While reserving the right to raise this issue in future proceedings, if appropriate, the Consumer Advocate agreed to use a growth factor as a means of determining some expenses in this proceeding."[47] The Consumer Advocate agreed to Young Brothers' use of an inflationary factor "in recognition of the Commission's past acceptance of such growth factors[.]"[48]

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[45]Joint Supplement, Attachment B, at 15.

[46]Specifically, Young Brothers applied the inflationary factor to certain of the accounts in the following categories: other cargo handling expense, other maintenance department expense, administrative and general miscellaneous expense, and allocated miscellaneous expense. See Young Brothers' response to CA-IR-25.

[47]Joint Supplement, Attachment B, at 18. The acronym CPI refers to the Honolulu Consumer Price Index for urban consumers.

[48]Joint Supplement, Attachment B, at 18 (footnote and citation therein omitted). As an example, the Consumer Advocate cites to In re Hawaii Elec. Light Co., Inc., Docket No. 94-0140, Decision and Order No. 15480, filed on April 2, 1997, at 22-24 (the commission found reasonable the electric utility's use of a

The three percent economic inflator is based on the real Gross Domestic Product economic index calculated and forecasted by the State Department of Business, Economic Development and Tourism,[49] as adjusted upward by the Parties' agreement. Similarly, the three percent inflationary factor is based on the CPI, as adjusted downward by the Parties' agreement.[50] The commission accepts as reasonable the Parties' agreement to utilize the economic inflators, each at three percent, in forecasting Young Brothers' revenues and certain of its expenses at present rates.

With respect to the cost of service model and corresponding allocation factors, the Parties stipulate as follows:

> . . . the Consumer Advocate recommended that the data upon which allocation factors are derived should reflect the agreed upon normalized barge fleet for the Test Year (as well as the previously agreed upon adjustments to revenue requirement components as described in this Stipulation).
>
> [Young Brothers] asserted that utilizing the agreed upon normalized barge fleet in the [cost of service] model's barge storage plan and average rate base components would not result in significantly different cost allocation factors <u>from that presented in [Young Brothers'] Direct Testimonies</u>. Notwithstanding the time constraints in this proceeding and in the spirit of cooperation and compromise, however, [Young Brothers] agreed to address the Consumer

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2.5 percent inflationary factor for the test year, which was based on a wide range of general inflation factors, including the CPI, and implicit price deflators).

[49]<u>See</u> YB-DT-500, at 4-5; YB-RT-400, at 4; and Young Brothers' responses to CA-IR-26, CA-IR-27, and CA-IR-105d. The Gross Domestic Product was formerly known as the GSP.

[50]<u>See</u> YB-DT-500, at 4-5; and YB's responses to CA-IR-25 and CA-IR-104c.

> Advocate's concern and, on July 10, 2007, provided the Consumer Advocate with a revised [cost of service] output using the agreed upon normalized Test Year barge utilization and consolidated average Test Year rate base components. A copy of the July 10, 2007 [cost of service] output is attached as Exhibit H to this Stipulation.
>
> In the interest of compromise, for purposes of settlement, <u>the Parties agree to adopt the results of the [cost of service] model presented by [Young Brothers] in the Application filed in this proceeding, adjusted to reflect the agreed upon revenue requirement components and normalized Test Year barge utilization</u>. The Parties further agree to work together to develop a format for the presentation of the model's output that takes into consideration concerns raised by the Consumer Advocate during the proceeding relating to the need to make review of the model's output more efficient, understandable, and simple. The output format and presentation to be developed will be updated and filed annually, so long as [Young Brothers] utilizes the "zone of reasonableness" practice, and can then be used in future rate proceedings (*i.e.*, filings under the authorized "zone of reasonableness" process or a general rate application filed under the provisions of HRS ch. 271G.)

Joint Supplement, Attachment B, at 50-51 (footnote and text therein omitted) (emphasis added); <u>see also</u> Parties' Exhibit H, Young Brothers' Cost of Service Output, July 10, 2007 (confidential seal).

The commission found that the cost of service studies (2001, 2002, and 2003) filed by Young Brothers in Docket No. 01-0255, and approved by the commission therein, appeared to represent a fair allocation between the water carrier's interstate and intrastate operations. More recently, Young Brothers represents that the cost of service methodology, as developed in 2002 based on the 2001 data (and updated thereafter), continues to accurately describe Young Brothers' operations for cost allocation purposes.[51]

The Parties, as part of their Stipulation, agree on the cost of service model presented by Young Brothers in this proceeding, as adjusted, at the Consumer Advocate's request, to reflect the agreed-upon revenue requirement components and normalized Test Year barge utilization factors. The commission finds reasonable the Parties' agreement in this regard, and thus, will accept the allocation factors utilized by the Parties in setting Young Brothers' intrastate revenue requirement (revenues, expenses, and rate base) at present rates.[52] As noted by the Parties, Young Brothers' cost of service studies from 2002 onward, including the cost of service output for this general rate proceeding, Docket No. 2006-0396, has been essentially based on the underlying assumptions reflected in the 2001 cost of service model.

C.

Operating Revenues

The Parties' initial estimates of Young Brothers' total consolidated operating revenues at present rates, as reflected in Young Brothers' Application[53] and in the Consumer Advocate's Direct Testimonies,[54] respectively, were as follows:

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[51]See YB-RT-100.

[52]See Exhibit I, attached.

[53]See Young Brothers' Application, YB-Ex-7, at 4 and 12; YB-Ex-10, at 1-2; YB-Ex-11, at 1-2; and YB-DT-500, at 5-6.

Category	YB's Estimate Present Rates	CA's Estimate Present Rates
Freight	$58,264,852	$59,858,032
Interstate	$27,407,642	$28,156,796
Cargo Insurance	$2,742,589	$2,817,582
Miscellaneous	$1,676,570	$1,722,414
Stevedore	$565,922	$581,396
Tug	$2,140,272	$2,198,795
Total	$92,797,848	$95,335,015

The Parties, as a result of their Stipulation, agree to the following estimates of Young Brothers' total consolidated operating revenues at present rates (Stipulation, Exhibit A):

Category	Present Rates
Freight	$58,483,422
Interstate	$27,456,297
Cargo Insurance	$2,758,658
Miscellaneous	$1,686,396
Stevedore	$569,237
Tug	$2,150,426
Total	$93,104,436

Freight revenues consist of the revenues generated from the transport of intrastate cargo pursuant to Tariff 5-A.[55] Interstate revenues represent the revenues generated from Young Brothers' customers (mainly Horizon Lines, Matson Navigation Company, and Aloha Cargo Transport) for the transport of interstate cargo pursuant to the connecting carrier agreements, and cargo transported under special charters (including the military). Cargo insurance revenues represent the amounts Young

[54] See Exhibit CA-101.

[55] Specifically, "Auto Racked and RoRo, Dry 20, 24, 40, 45, Mixed, and Pallet, Flatrack/Platform, G-Van, Reefer 20, 24, 20, 45, Mixed, Pallet and RoRo." Joint Supplement, Attachment B, at 11.

Brothers charges its customers for the insurance coverage of their cargo shipments.[56] "Cargo insurance revenue is related to general freight revenue, in that a separate charge for cargo insurance is applied to each general freight bill of lading."[57]

Miscellaneous revenues are derived from fees for storage, detention, and other accessorial services. Stevedore revenues consist of stevedore labor charges to Young Brothers' customers for maintaining the water carrier's operations beyond normal business hours. Tug revenues result from charges for tug rentals and charter sailings.[58]

In general, the Parties' stipulated total estimated intrastate operating revenues at present rates (i.e., the freight, cargo insurance, miscellaneous, stevedore, and tug revenues) are based on Young Brothers' actual cargo movements in 2006, increased by the stipulated economic indicator of three percent.[59] Conversely, "[f]orecasted revenues from the carriage of [LCL] cargo reflect no growth over actual 2006 movements; this category includes dry and reefer mixed cargo, and dry and reefer cargo on pallets. No growth in revenue is also projected for

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[56] See Parties' response to PUC-IR-103 (descriptions of freight, interstate, and cargo insurance revenues).

[57] Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997, at 7; see also Joint Supplement, Attachment B, at 11-12.

[58] See Parties' response to PUC-IR-103 (descriptions of miscellaneous, stevedore, and tug revenues).

[59] See Parties' response to PUC-IR-103; see also Young Brothers' response to CA-IR-21; and Joint Supplement, Attachment B, at 15-17, and Exhibit G, Revenue Projection Calculations (confidential seal).

cargo carried in 24-foot and 45-foot reefers."[60] In sum, the Parties' stipulated total estimated intrastate operating revenues at present rates are set forth in detail in Exhibit G, Revenue Projection Calculations (confidential seal), of the Stipulation and Joint Supplement, Attachment B.

Meanwhile, the Parties' methodology for forecasting Young Brothers' interstate operating revenues at present rates are described under confidential seal in their response to PUC-IR-103, as detailed in Exhibit G, Revenue Projection Calculations (confidential seal), of the Stipulation and Joint Supplement, Attachment B.[61]

Upon review, the commission accepts as reasonable the Parties' stipulated forecasts for Young Brothers' total consolidated operating revenues at present rates.

D.

Operating Expenses

Young Brothers' operating expenses consist of the following categories: (1) cargo handling and maintenance department; (2) voyage; (3) administrative and general; (4) taxes other than income taxes; and (5) depreciation. Young Brothers'

[60]Parties' response to PUC-IR-103 (citing Young Brothers' response to CA-IR-21; and Joint Supplement, Attachment B, at 15 n.6 (identifying under confidential seal the cargo categories where the economic indicator was not applied).

[61]Parties' response to PUC-IR-103 (partial confidential seal); and Stipulation, Exhibit G, Revenue Projection Calculations (confidential seal).

initial estimates of its Test Year operating expenses were as follows:[62]

Category	Present Rates
Cargo Handling	$35,095,116
Maintenance Department	($122,607)
Voyage	$31,254,013
Administrative and General	$7,530,326
Taxes Other Than Income Taxes	$663,520
Depreciation	$10,234,194
Total	$84,654,562

The Consumer Advocate's initial estimates of Young Brothers' Test Year operating expenses were as follows:[63]

Category	Present Rates
Cargo Handling	$35,004,314
Maintenance Department	($136,331)
Voyage	$28,052,409
Administrative and General	$7,474,200
Taxes Other Than Income Taxes	$843,699
Depreciation	$10,200,743
Total	$81,439,034

The Parties, as a result of their Stipulation, agree to total consolidated operating expenses at present rates of $84,063,773 (Joint Supplement, Attachment B, Exhibit A), as follows:

[62]See Young Brothers' Application, YB-Ex-7, at 5-9 and 13; YB-Ex-11, at 1 and 3-7; and YB-DT-500, at 6-10.

[63]See Exhibit CA-101.

Category	Present Rates
Cargo Handling	$35,163,314
Maintenance Department	($122,607)
Voyage	$30,259,910
Administrative and General	$7,530,326
Taxes Other Than Income Taxes	$663,520
Depreciation	$10,569,310
Total	$84,063,773

The Parties' stipulated amount of $84,063,773 reflects the Parties' agreement to utilize the three percent inflationary factor to forecast certain of Young Brothers' Test Year expenses. Moreover, the Parties agree that a fleet of ten barges represents the normalized fleet that will be used by Young Brothers to transport interstate and intrastate cargo between the islands during the Test Year.[64] Specifically, following the acquisition of two barges and the retirement of three barges, Young Brothers will have a fleet of ten barges for the Test Year. As agreed-upon by the Parties, the Test Year also reflects the use of eight tugs to transport Young Brothers' ten barges on a normalized basis.[65]

To determine the reasonableness of the Parties' estimates for the cargo handling, maintenance department, voyaging, and administrative and general expenses, the commission initially reviewed the past six years of actual recorded data, from 2001 to 2006, for purposes of comparison with the Parties' stipulated Test Year estimates. During its review, the commission noted certain significant increases between 2005 and

[64] See Joint Supplement, Attachment B, at 24-25 and 30; and Young Brothers' response to CA-RIR-10.

[65] See Joint Supplement, Attachment B, at 34-35.

2006. Thus, in order to account for this wide variation in data from year-to-year, the commission utilized a three-year exponential moving average ("EMA"), also referred to as an exponentially weighted moving average, in reviewing the Parties' stipulated Test Year projections for cargo handling, maintenance department, voyaging, and administrative and general expenses.[66]

1.

Cargo Handling and Maintenance Department

Young Brothers' cargo handling and maintenance department expenses are related to its port operations, including the receipt of cargo, bill-of-lading processing, bookings, and the actual movement of cargo (staging, loading, unloading, and restaging). These expenses reflect labor costs and related fringe benefits, the cost to repair and maintain shore-side equipment, rental of the premises, and all other necessary costs to maintain Young Brothers' port operations.[67]

The specific accounts for Young Brothers' cargo handling and maintenance department expenses are set forth in the Parties' Exhibit A, page 2, and include wages, payroll taxes, contributions and welfare plans (i.e., the labor and labor-related accounts), fuel and power, repairs and maintenance,

[66] In general, the EMA applies weighting factors that decrease exponentially, thereby giving more weight to recently recorded data while not discarding older recorded data entirely. Thus, the EMA reduces the lag that can occur in the simple moving average by applying more weight to recent data relative to older data.

[67] Joint Supplement, Attachment B, at 18-19.

cargo insurance premiums, other cargo handling, rents, and other maintenance department expenses.

For the Test Year, Young Brothers projects overall wage increases of 4.11 percent for its collective bargaining employees and three percent for its non-bargaining employees.[68]

The Parties, as a result of their Stipulation, agree to the following estimates of Young Brothers' cargo handling and maintenance department expenses at present rates:

<u>Cargo Handling</u>	<u>Present Rates</u>
Wages	$13,905,412
Payroll Taxes	$1,148,586
Contributions, Welfare Plans	$6,843,148
Fuel and Power	$2,555,394
Repairs and Maintenance	$5,825,800
Cargo Insurance Premiums	$1,767,444
Other	<u>$3,117,530</u>
Total, Cargo Handling	$35,163,314

<u>Maintenance Department</u>	<u>Present Rates</u>
Wages	$3,117,298
Payroll Taxes	$257,486
Contributions, Welfare Plans	$1,120,313
Rents	$147,840
Other	$471,200
Allocated to Other Departments[69]	<u>($5,236,744)</u>
Total, Maintenance Department	($122,607)

As noted by the Parties, "[b]ased on [their] agreement reached on [the] application of the CPI factor . . . and the cost

[68]<u>See</u> Young Brothers' response to CA-IR-02.

[69]"Because these expenses are allocated to other departments, the amount is expressed as a credit. The costs are allocated to the department whose equipment was serviced or repaired by the Maintenance Department." Joint Supplement, Attachment B, at 23-24.

of fuel[,] . . . the Parties stipulate to consolidated Test Year Cargo Handling and Maintenance Department expense projections of $35,163,314 and $(122,607), respectively. As a result, the Parties stipulate to Cargo Handling and Maintenance Department expenses of $35,040,707."[70]

The Parties' stipulated consolidated estimate of $35,163,314 for cargo handling expense is approximately 8.6 percent more than the three-year EMA of $32,380,878 and 1.4 percent less than the 2006 actual data of $35,664,453.[71] The Parties' stipulated consolidated projection of $5,114,137 for maintenance department expense (prior to the allocation to other departments), meanwhile, is approximately 18.1 percent more than the three-year EMA of $4,330,961 and 4.65 percent more than the 2006 actual data of $4,887,012.[72]

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[70]Joint Supplement, Attachment B, at 19.

[71]When compared to the three-year EMA, the Parties' stipulated estimates for the cargo handling expense accounts reflect increases in wages (10.78 percent), payroll taxes (13 percent), contributions and welfare plans (20.47 percent), fuel and power (12.27 percent), and repairs and maintenance (10.2 percent), and decreases in cargo insurance premiums (16.28 percent) and other cargo handling expenses (9.85 percent). The total number of collective bargaining employees for cargo handling is 190 (91 percent), and the total number of non-bargaining employees is 18 (9 percent). <u>See</u> Young Brothers' response to CA-IR-1.

[72]When compared to the three-year EMA, the Parties' stipulated estimates for the maintenance department expense accounts reflect increases in wages (23.97 percent), payroll taxes (26.69 percent), contributions and welfare plans (12.82 percent), rents (4.4 percent), and a decrease in other maintenance department expenses (1.58 percent). The commission's review of the maintenance department employee count reveals that the number of employees was relatively constant from 2002 to 2005, with a 2.78 percent increase between 2003 and 2004. However, the average employee count increased by approximately

The Consumer Advocate accepts Young Brothers' consolidated expense projections for the labor and labor-related accounts, repairs and maintenance, cargo insurance premiums, other cargo handling, rents, other maintenance department, and the allocation to other departments. For the fuel and power account, the Parties stipulate to a consolidated expense amount of $2,555,394. This amount represents the cost of diesel fuel used to operate Young Brothers' shore-side equipment, based on an average Test Year fuel expense amount of $2.16 per gallon, plus the power costs incurred by Young Brothers in its cargo handling operations.

The commission accepts as reasonable the Parties' stipulated consolidated estimates, at present rates, of: (1) $35,163,314 for cargo handling expense; and (2) $5,114,137 for maintenance department expense (prior to the allocation to other departments).

2.

Voyaging

Young Brothers' voyaging expenses consist of costs associated with its tug and barge operations, including repair and maintenance costs, dockage and port entry fees, protection and indemnity insurance, hull and machinery insurance, and fuel and lubrication costs.[73] The stipulated amounts for voyaging expenses are based on a fleet of ten barges.

9.75 percent between 2005 and the Test Year. See Young Brothers' response to CA-IR-1.

The specific accounts for Young Brothers' voyaging expenses, as set forth in the Parties' Exhibit A, page 2, consist of uninsured casualty, insurance/hull/machinery, barge shifts, repairs and maintenance, dockage and port entry fees, lease, tug, and miscellaneous.

The Parties, as a result of their Stipulation, agree to the following estimates of Young Brothers' voyage expenses at present rates:

Voyage	Present Rates
Uninsured Casualty	$70,000
Insurance/Hull/Machinery	$1,073,257
Barge Shifts	$4,446,042
Repairs and Maintenance	$3,057,000
Dockage and Port Entry Fees	$452,720
Lease (Outside Tug Expenses)	$839,500
Tug	$20,222,791
Miscellaneous	$98,600
Total	$30,259,910

The Parties' stipulated consolidated estimate of $30,259,910 for voyaging expense is 15.8 percent more than the three-year EMA of $26,129,516 and 2.75 percent less than the 2006 actual data of $31,114,545.[74]

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[73]Joint Supplement, Attachment B, at 24.

[74]When compared to the three-year EMA, the Parties' stipulated estimates for the voyaging expense accounts represent increases in uninsured casualty (24.74 percent), repairs and maintenance (1.03 percent), insurance/hull machinery (55.6 percent), barge shifts (96.1 percent), dockage and port entry fees (3.1 percent), miscellaneous (16.06 percent), and tug (9.96 percent), and a decrease in lease (9.24 percent) expenses.

Upon review, the commission notes that, with respect to the two accounts with percentage increases of more than fifty percent when compared with the three-year EMA: (1) the increase in insurance/hull/machinery expense is largely attributable to the insurance premiums for the newly chartered barge, the Columbia

The Consumer Advocate accepts Young Brothers' consolidated expense projections for uninsured casualty, insurance/hull/machinery, and barge shifts.

The uninsured casualty account, in effect, consists of the costs incurred by Young Brothers as a result of casualties that fall within its deductible clause.[75] For the insurance/hull/machinery account, the Parties note that Young Brothers' initial estimate of $1,073,257 "effectively reflects

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Boston, which was placed into service in 2006, and the new RO/RO barge, the Kaholo, which was placed into service during the Test Year, see Young Brothers' response to CA-IR-08; see also Young Brothers' responses to CA-IR-93 and CA-RIR-4d (the Kaholo barge was placed into service on March 9, 2007); and YB-RT-300, at 9 - 10 (barge insurance expense); and (2) the increase in barge shifts expense "is the result of increased barge shift activity due to increased sailings, rate increases, and changes in the fuel surcharge" reflected in Young Brothers' written agreement with HTB. See Young Brothers' response to CA-IR-9. As noted by Young Brothers:

> The fuel surcharge applies only to those barge shifts occurring in Honolulu Harbor.
>
> . . . .
>
> Up to 1985, [HTB] charged YB $1,800 for a barge shift at neighbor island harbors. After 1985, Matson began offering tug assist services, charging $2,500 for a neighbor island assist, after which HTB charged a competitive rate to YB of $2,300 for a neighbor island assist. This rate remained unchanged through December 31, 2006. For 2007 HTB charges YB $2,750 for a neighbor island assist compared to its posted tariff of $4,200 per assist.

Young Brothers' response to CA-IR-95.

[75]See Young Brothers' response to CA-IR-91; and Dockets No. 7398 and No. 7506 (consolidated), Decision and Order No. 12479, filed on June 30, 1993, at 28 and 32; see also Joint Supplement, Attachment B, at 24 n.9, and 25 n.11. Based on the 2004, 2005, and 2006 actual data, such costs incurred by Young Brothers were $66,635, $59,248, and $65,094, respectively. See Young Brothers' response to CA-IR-91. Moreover, "[t]he Uninsured Casualty expense projection of $70,000 was not affected by the negotiated barge count and was accepted by the Parties." Joint Supplement, Attachment B, at 25 n.11 (citing to YB-WP-104).

the insurance expense for ten barges, as agreed to by the Parties."[76] The barge shifts account, meanwhile, represents the costs, "based on a negotiated hourly rate, for two tugs to move, or 'shift,' a barge from one pier or site[,] and an associated fuel charge" assessed by HTB.[77] Employees of HTB are involved in barge shift services, and Young Brothers pays HTB for these services, pursuant to a written agreement.[78]

The barge repairs and maintenance account consists of expenditures for: (1) regular maintenance and repair work; and (2) drydock and overhaul work. Based on an average cost of $145,700 to perform regular maintenance on a barge, the Parties stipulate to an amount of $1,457,000 for regular maintenance and repair work. Moreover, based on the average cost of $500,000 per barge to perform three drydocks and overhauls during the Test Year, plus the amount of $200,000 amortized over two years to prepare and paint the lower internal steel structure of the Kaholo barge, the Parties stipulate to an amount of $1,600,000 for drydock and overhaul work.[79] Overall, the Parties stipulate to total consolidated barge repairs and maintenance expense of $3,057,000 for the Test Year.[80] This amount represents a decrease of $911,310 from Young Brothers' initial estimate of $3,968,310 for barge repair and maintenance expense.

[76]Joint Supplement, Attachment B, at 30.

[77]Joint Supplement, Attachment B, at 30.

[78]<u>See</u> Young Brothers' response to CA-IR-09.

[79]($500,000 x 3 barges) + ($200,000 ÷ 2 year amortization) = $1.6M.

[80]$1,457,000 + $1,600,000 = $3,057,000.

The dockage and port entry fees account represents the amounts paid by Young Brothers to enter into and dock at the port facilities statewide. The Parties stipulate to an amount of $452,720 for dockage and port entry fees, based on the average twelve-month fee of $45,272 per barge, times ten barges.[81] This amount represents a decrease of $45,280 from Young Brothers' initial estimate.

For the lease account, the Parties stipulate to a Test Year amount of $839,500, "to reflect a normalized operating expense."[82] The stipulated amount represents a decrease of $409,500 from Young Brothers' initial estimate.

The tug account consists of various expenditures set forth in the Parties' Exhibit A, pages 4 and 5, filed with the commission under partial confidential seal, including the average Test Year fuel expense amount of $2.16 per gallon. The Parties stipulate to a Test Year amount of $20,222,791 for tug expense, based on Young Brothers' need to operate a fleet of eight tugs to transport its ten barges on a normalized basis. The stipulated amount represents an increase of $379,387 from Young Brothers' initial estimate.

For the miscellaneous account, the Parties stipulate to a Test Year amount of $98,600, based on the average miscellaneous cost of $9,860 per barge, times ten barges.[83] This amount

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[81]$45,272 x 10 barges = $452,720.

[82]Joint Supplement, Attachment B, at 33.

[83]$9,860 x 10 barges = $98,600.

represents a decrease of $7,400 from Young Brothers' initial estimate.

The commission accepts as reasonable the Parties' stipulated consolidated estimate of $30,259,910 for voyaging expense at present rates.

3.

Administrative and General

Young Brothers' administrative and general expenses "include costs associated with labor and related fringe benefits, professional fees, office supplies, office rentals, dues and subscriptions, travel, meetings and seminars, and other miscellaneous charges (such as port security). It also includes allocations of costs incurred on YB's behalf by YB's affiliate[,]" HTB.[84]

The specific accounts for Young Brothers' administrative and general expenses are set forth in the Parties' Exhibit A, page 2. The Consumer Advocate accepts Young Brothers' projection for consolidated administrative and general expense. Thus, the Parties stipulate to a consolidated estimate of $7,530,326 for administrative and general expense, which is 16.28 percent more than the three-year EMA of $6,476,305 and 2.87 percent more than the 2006 actual data of $7,320,639.

[84]Young Brothers' Application, at 68 (quoting YB-DT-500, at 7).

The commission accepts as reasonable the Parties' stipulated consolidated estimate of $7,530,326 for administrative and general expense, at present rates.[85]

4.

Taxes Other Than Income Taxes

The Consumer Advocate accepts Young Brothers' initial estimate of $663,520 for Taxes Other Than Income Taxes ("TOTIT"), as reflected in Exhibit YB-Ex-7 of the Application. This sum is calculated as follows:

Real Property Tax	$144,396
General Excise Tax	$222,628
Public Utility Fee	$296,496
Total	$663,520

See Parties' Exhibit A, at 3; and Young Brothers' Application, Exhibit YB-Ex-7.

[85] A portion of Young Brothers' Test Year advertising expense amount of $126,300 includes expenses related to competitive promotional advertising, see PUC-IR-103, which may appear inconsistent with the Hawaii Supreme Court's pronouncement in In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 535 P.2d 1102 (1975) (disallowance of a public utility's competitive promotional expenditures). Nonetheless, because this expense amount represents a de minimis amount, when compared to Young Brothers' total consolidated administrative and general expense, i.e., approximately 1.68 percent, the commission, for purposes of this rate case only, will accept the Parties' stipulated expense amount for advertising expense. Cf. In re Kauai Island Util. Coop., Docket No. 2007-0015, Decision and Order No. 23317, filed on March 23, 2007 (the amount of annual revenues anticipated to be generated by the meter base surge protector represents a de minimis amount or impact on the electric utility's revenue requirement); and In re Hawaiian Elec. Co., Inc., Docket No. 04-0274, Decision and Order No. 21518, filed on December 23, 2004 (under the circumstances, since the electric utility's share of the project costs will have a de minimis effect on ratepayers, if at all, the commission will grant the waiver requested by the utility).

The Parties, in stipulating to this amount, acknowledge that revenue taxes (i.e., the general excise tax and the public utility fee) should normally be based on Young Brothers' total Test Year revenues at proposed rates (and not at present rates). Nonetheless, in this case, "[t]he Parties' agreement was reached in the interest of compromise and in recognition of the global settlement reached on all areas of difference."[86] The commission accepts as reasonable the Parties' overall estimate of $663,520 for TOTIT.

5.

Depreciation

Young Brothers' depreciation expense represents the systematic write-off of the cost of a plant's assets over the asset's depreciable life. Consistent with Young Brothers' plant-in-service, these expenses include the depreciation expenses for floating equipment (tugs and barges), terminal property and equipment (hi-lifts, containers, and chassis), and other shipping property and equipment (automobiles, trucks, and service vehicles).[87]

The Parties stipulate to a depreciation expense amount of $10,569,310 for the Test Year, based on the Parties' agreed-upon net plant-in-service amount for the Test Year (see Section II.F.1, below), including their agreement to normalize the Test Year depreciation expense by reflecting the depreciation

[86] Joint Supplement, Attachment B, at 39.

[87] See Parties' response to PUC-IR-104 (descriptions of the net plant-in-service items).

for nine barges.[88] The commission finds reasonable this stipulated amount for depreciation expense.

E.

Income Taxes

The Parties agree on the methodology and tax rates for computing income taxes.[89] Specifically, as reflected in the Parties' Exhibit A, page 1, the Parties apply a composite State and federal income tax rate of 38.9098 percent to Young Brothers' projected taxable income of $9,040,663, in deriving the water carrier's income tax expense amount of $3,517,704. The commission accepts as reasonable the sum of $3,517,704 for income taxes.

F.

Rate Base

The Parties stipulate to the use of an average Test Year rate base, which "averages the year-beginning and

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[88]As noted by the Parties, "[t]he tenth barge that will comprise the normalized fleet of ten barges is the *Columbia Boston*, which is leased by [Young Brothers]." Joint Supplement, Attachment B, at 37 n.22 (emphasis added). Thus, Young Brothers "reflected depreciation expense for all of the barges in its fleet that are owned by [Young Brothers] and that are expected to be utilized in the provision of interisland transport of cargo during the Test Year." Joint Supplement, Attachment B, at 37 (emphasis added).

[89]See generally Young Brothers' Application, Exhibits YB-Ex-7, at 14, and YB-Ex-8, at 14.

year-ending Test Year balances of rate base components[]" in calculating Young Brothers' rate base.[90]

Young Brothers' rate base consists of its net plant-in-service (i.e., the plant-in-service minus accumulated depreciation), *plus* materials and supplies inventory, *minus* accumulated deferred income taxes ("ADIT") and the Hawaii State Capital Goods Excise Tax Credit ("HSCGETC"), *plus* working cash. The additions to rate base represent the funds supplied by Young Brothers' shareholders, while the deductions from rate base represent funds provided by sources other than shareholders (i.e., ratepayers), for which shareholders are not entitled to earn a return on.

Pages 7 to 10 of the Parties' Exhibit A set forth the Parties' agreed-upon calculations for Young Brothers' average Test Year rate base of $64,108,891, as follows:[91]

Plant-in-service	$136,236,332
Accumulated depreciation	($73,861,319)
Net plant-in-service	$62,375,013
Materials and supplies inventory	$2,998,557
ADIT	($3,252,574)
HSCGETC	($1,933,768)
Average rate base, w/o working cash	$60,187,228
Working cash	$3,921,663
Average rate base	$64,108,891

[90]Joint Supplement, Attachment B, at 40. In support of the average Test Year rate base methodology, the Parties cite to In re Young Bros., Ltd., Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997, at 15-16.

[91]See also Parties' Exhibit A, at 1.

1.

Net Plant-in-Service

Young Brothers' net plant-in-service reflects its investments in floating equipment, terminal property and equipment, and other shipping property and equipment, less accumulated depreciation.[92]

Young Brothers, in its Application, initially proposed a net plant-in-service balance of $72,748,695, while the Consumer Advocate, in its direct testimony, recommended a balance of $71,855,196. Based on the Consumer Advocate's assertion that Young Brothers' plant additions for 2006 and 2007 will be significantly less than the amounts forecasted by Young Brothers for the Test Year, Young Brothers agreed to make the appropriate downward adjustments to its net plant-in-service balance. "In addition, to be consistent with these adjustments," Young Brothers likewise agreed to adjust its Test Year depreciation expense, ADIT, HSCGETC, and working cash.[93]

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[92]Exhibit A, page 8, of the Joint Supplement, Attachment B, also lists acquisition adjustment as a fully amortized net plant-in-service item. In their response to PUC-IR-104, the Parties make the following clarification:

> Acquisition Adjustment represents the premium paid by Hawaiian Electric Industries, Inc. when it acquired YB from Dillingham Corporation. <u>The balance in this category is fully amortized so there is no rate base impact associated with this item. As a result, to avoid confusion in future rate proceedings, the line item will be removed from Property, Plant & Equipment schedules</u>.

Parties' response to PUC-IR-104 (emphasis added).

[93]Joint Supplement, Attachment B, at 41.

The net plant-in-service balance represents, by far, the major component of Young Brothers' average Test Year rate base. The Parties' agreement on the net plant-in-service balance, in effect, reflects the net investment in property utilized by Young Brothers in the transport of cargo between the islands during the Test Year. The commission accepts as reasonable the Parties' stipulated amount of $62,375,013 for Young Brothers' consolidated net plant-in-service balance, as reflected on page 8 of the Parties' Exhibit A.[94]

2.

Materials and Supplies Inventory

Materials and supplies represent Young Brothers' investments in inventory for its water carrier operations. Specifically, ropes, tug parts, container parts, chassis parts, hi-lift parts, barge parts, and fuel and lubricants on board the tugs, comprise Young Brothers' materials and supplies inventory.[95]

"The Parties agree to compute materials and supplies (inventory) by averaging balances at December 31, 2006 and December 31, 2007. The resulting average materials and supplies (inventory) at present rates is $2,998,557. See [Parties'] Exhibit A at 7. This methodology ensures that the computation is consistent with the calculation of net plant-in-service."[96]

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[94]See also Young Brothers' response to CA-RIR-2, at 4-6 (chart depicting Young Brothers' monthly plant additions for the Test Year).

[95]Young Brothers' response to CA-IR-23.

[96]Joint Supplement, Attachment B, at 41.

The commission accepts as reasonable the Parties' stipulated amount of $2,998,557 for Young Brothers' consolidated materials and supplies inventory.[97]

3.

Accumulated Deferred Income Taxes

ADIT represents the difference between the amount of income tax expense reported for book (i.e., ratemaking) and for tax purposes. In general, a regulated entity calculates and reports book depreciation expenses on a straight-line basis (i.e., straight-line depreciation), but for tax purposes, the regulated entity may write-off the same asset on an accelerated basis, i.e., accelerated depreciation. The difference in tax liabilities calculated for book and tax purposes, respectively, generates deferred income taxes. Thus, the regulated entity must pass onto its ratepayers the tax benefits received as a result of the accelerated tax depreciation practices. For ratemaking purposes, the ADIT is reflected as a reduction to rate base.

The Parties' agreed-upon calculations for ADIT are set forth in Exhibit A, page 10, of the Joint Supplement, Attachment B.[98] The Parties stipulate to $3,252,574 as the

[97] Cf. Docket No. 94-0059, Decision and Order No. 13680, filed on December 12, 1994, Section VI.C, at 36 - 37 (in the absence of certain information to confirm the commission's belief regarding Young Brothers' materials and supplies inventory, the commission will accept the agreed-upon amount as reasonable for purposes of the stipulation; such acceptance, however, should not be construed as approval of the methodology by which the stipulated amount was derived).

[98] As explained by the Parties:

applicable amount for average consolidated ADIT. This amount results from Young Brothers' agreement to increase its initial estimate for ADIT, which did not include any deferred income taxes for certain Test Year plant additions.

The commission approves as reasonable the Parties' stipulated amount of $3,252,574 for consolidated ADIT.

> As the beginning ADIT balance, [Young Brothers] used the December 31, 2006 amount of $3,192,970 reported to the Commission. To this beginning ADIT balance, [Young Brothers] (1) added the book and tax depreciation difference at the combined federal and state income tax rate; (2) added the federal income tax effect on the 2007 amortization of the [HSCGETC]; and (3) subtracted the deferred federal income tax effect on the HSCGETC for the 2007 fixed asset additions.
>
> The book and tax depreciation difference for the Test Year ($1,462,789) was multiplied by the combined federal and state income tax rate of 38.9098 percent to arrive at the additional deferred taxes of $569,168. The additional deferred taxes of $569,168 were then added to the beginning ADIT balance of $3,192,970.
>
> To calculate the deferred federal income tax effect on the Test Year HSCGETC amortization of $238,761 (discussed below; *see also* column (E) on page 10 of Exhibit A), the amount of $238,761 was first reduced by $2,400 then multiplied by the 35 percent federal income tax rate. The resulting $82,726 was added to the beginning ADIT balance of $3,192,970.
>
> The Test Year HSCGETC recorded for the 2007 fixed asset addition of $1,519,562 (also discussed below; *see also* column (E) on page 10 of Exhibit A) was multiplied by the 35 percent federal income tax rate, resulting in $532,687. This amount was subtracted from the beginning ADIT balance of $3,192,970.
>
> The resulting December 31, 2007 ending balance for deferred income taxes is $3,312,177 (*see* column (D) on page 10 of Exhibit A). The stipulated balance of $3,252,574 is the sum of the beginning balance and the ending balance, divided by 2 (that is, $3,192,970 plus $3,312,177, divided by 2).

Joint Supplement, Attachment B, at 43-44 (footnote and text therein omitted).

4.

Hawaii State Capital Goods Excise Tax Credit

The HSCGETC is the tax credit authorized for purchases related to the acquisition or construction of capital goods in the State.[99] "Similar to ADIT, the tax benefits associated with HSCGETC must be returned to a regulated utility company's customers. Thus, similar to ADIT, the accumulated balance of HSCGETC is reflected as an offset to rate base."[100]

The Parties' agreed-upon calculations for the HSCGETC are set forth in Exhibit A, page 10, of the Joint Supplement, Attachment B.[101] The Parties stipulate to an average unamortized HSCGETC balance of $1,933,768. Consistent with ADIT, this stipulated balance results from Young Brothers' agreement to increase its initial estimate for HSCGETC, which did not include any tax credits for certain Test Year plant additions.

The commission approves as reasonable the Parties' stipulated average unamortized HSCGETC balance of $1,933,768.

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[99]See HRS § 235-110.7.

[100]Joint Supplement, Attachment B, at 44.

[101]As explained by the Parties:

> As the beginning HSCGETC balance, [Young Brothers] used the December 31, 2006 amount of $1,293,367 reported to the Commission. To this beginning HSCGETC balance, [Young Brothers] (1) subtracted the 2007 HSCGETC amortization of $238,761 and (2) added the HSCGETC of $1,519,562 on the 2007 fixed asset additions.

5.

Working Cash

"Working cash is the sum that Young Brothers' investors need to supply to meet current obligations incurred in providing services, pending receipt of revenues from those services. Young Brothers is entitled to receive a return on such advances."[102]

"There are two components in calculating the amount of working cash: (1) the time lag between services rendered and the receipt of revenues for such services, and (2) the time lag between the incurrence of costs in providing services and the payment of such costs. The difference between these components is the "net collection lag." An average net collection lag is determined by dividing the net collection lag by 365 (days in a

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> The 2007 HSCGETC amortization of $238,761 (which is subtracted from the beginning HSCGETC balance) represents asset acquisitions from the years 1988 to 2006. Test Year 2007 HSCGETC will not begin amortization until January 1, 2008.
>
> The Test Year fixed asset additions of $37,989,050 (which is added to the beginning HSCGETC balance) (*see* note 2 on page 8 of Exhibit A) will be eligible for HSCGETC in the amount of $1,519,562 ($37,989,050 multiplied by 4 percent).
>
> The resulting December 31, 2007 ending balance for HSCGETC is $2,574,168 (that is, $1,293,367 minus $238,761 plus $1,519,562) (*see* column (E) on page 10 of Exhibit A). The stipulated balance of $1,933,768 is the sum of the beginning balance and the ending balance, divided by 2 (that is, $1,293,367 plus $2,574,168 divided by 2).

Joint Supplement, Attachment B, at 45.

[102]Docket No. 94-0059, Decision and Order No. 13680, filed on December 12, 1994, at 37; see also Dockets No. 7398 and No. 7506 (consolidated), Decision and Order No. 12479, filed on June 30, 1993, at 59.

year). Working cash is derived by multiplying the average net collection lag by the average daily operating expenditures."[103]

The Parties' calculations for working cash are set forth in Exhibit A, page 9, of the Joint Supplement, Attachment B. The calculations utilize the lead-lag factors last approved by the commission in In re Young Bros., Ltd., Dockets No. 7398 and No. 7506 (consolidated), Young Brothers' 1993 - 1994 split Test Year general rate case, as representative of Young Brothers' operations. For purposes of compromise, "the Consumer Advocate agrees to the application of the 1993 lead-lag factors in projecting working cash in this proceeding, based on [Young Brothers'] agreement to conduct another lead-lag study, using a sample of at least a year's span of data, for submission in its next general rate case[.]"[104]

The Parties' working cash calculation is referred to as a modified lead-lag study. This method compares the lag in paying for major operating expenses with the lag in receiving the revenues to pay for such expenses. In brief, the expenses are multiplied by the difference between that fraction of a year for which revenue is uncollected (revenue lag) and expense is unpaid (expense lag). The dollar amount resulting from the application of the differences between the revenue lag and the expense lag (i.e., the net lag) represents the working cash balance. The Parties calculated Young Brothers' working cash requirements by

[103]Docket No. 94-0059, Decision and Order No. 13680, filed on December 12, 1994, at 37; and Dockets No. 7398 and No. 7506 (consolidated), Decision and Order No. 12479, filed on June 30, 1993, at 59.

[104]Joint Supplement, Attachment B, at 46.

using factors of 31 lag days for labor, 17 lag days for other operating expenses, 13 lag days for revenue expenses, and 42 lead days for income taxes.[105]

The commission approves as reasonable the stipulated consolidated working cash amounts of $3,921,663 under present rates, and $3,724,896 under proposed (i.e., approved) rates.

G.

Rate of Return

As noted by the commission in Docket No. 96-0483, Young Brothers' most recent general rate case:

> In determining an appropriate rate of return on Young Brothers' rate base, we are guided by our past rate cases and by the guidelines set forth in Bluefield Waterworks and Improvement Co. v. Pub. Serv. Comm'n, 262 U.S. 679 (1923), and Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944). These guidelines prescribe that a fair return must:
>
> 1. Be commensurate with returns on investment in other enterprises having corresponding risks and uncertainties;
>
> 2. Provide a return sufficient to cover the capital costs of the business, including service on the debt and dividends on the stock; and
>
> 3. Provide a return sufficient to assure confidence in the financial integrity of the enterprise to maintain its credit and capital-attracting ability.

Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997, at 16.

[105] YB-Ex-8, at 16; and Parties' Exhibit A, at 9.

Moreover, as discussed by the Hawaii Supreme Court ("Court"), in In re Hawaii Elec. Light Co., Inc., 60 Haw. 625, 594 P.2d 612 (1979):

> A fair return is the percentage rate of earnings on the rate base allowed a utility after making provision for operating expenses, depreciation, taxes and other direct operating costs. Out of such allowance the utility must pay interest and other fixed dividends on preferred and common stock. In determining a rate of return, the Commission must protect the interests of a utility's investors so as to induce them to provide the funds needed to purchase plant and equipment, and protect the interests of the utility's consumers so that they pay no more than is reasonable.
>
> To calculate the rate of return, the costs of each component of capital - debt, preferred equity and common equity - are weighted according to the ratio each bears to the total capital structure of the company and the resultant figures are added together to yield a sum which is the rate of return.
>
> The proper return to be accorded common equity is the most difficult and least exact calculation in the whole rate of return procedure since there is no contractual cost as in the case of debt or preferred stock[:]
>
>> Equity capital does not always pay dividends; all profits after fixed charges accrue to it and it must withstand all losses. The cost of such capital cannot be read or computed directly from the company's books. Its determination involves a judgment of what return on equity is necessary to enable the utility to attract enough equity capital to satisfy its service obligations.
>
> . . . .
>
> Questions concerning a fair rate of return are particularly vexing as the reasonableness of rates is not determined by a fixed formula but is a fact question requiring the exercise of sound discretion by the Commission. It is often recognized that the ratemaking function involves the making of "pragmatic" adjustments and there is no single correct rate of return but that there is

a "zone of reasonableness" within which the commission may exercise its judgment.

In re Hawaii Elec. Light Co., Inc., 60 Haw. 625, 632-33 and 636, 594 P.2d 612, 618-19 and 620 (citations omitted) (emphasis added).

The Parties, from the outset, agreed on the following capital structure and cost rates, with their sole area of disagreement involving the appropriate cost of common equity:

Capital Component	Weight	Cost	Weighted Cost
Short-term debt	3%	5.63%	.17%
Current portion, Long-term debt	2%	6.86%	.14%
Long-term debt	40%	6.86%	2.74%
Common equity	55%		
	100%		

Young Brothers proposed a cost of common equity of 14.16 percent,[106] while the Consumer Advocate recommended a 13 percent cost of common equity.[107] Accordingly, Young Brothers proposed a rate of return of 10.84 percent for its intrastate operations,[108] while the Consumer Advocate recommended a rate of return of 10.2 percent.[109]

As a result of their settlement negotiations, "[a]fter agreeing on the amounts for Young Brothers' [T]est [Y]ear operating revenues, expenses, and rate base at present rates, for

[106]See YB-DT-400, at 34.

[107]See CA-T-3, at 3.

[108]See YB-DT-400.

[109]See CA-T-3.

its interstate and allocated intrastate operations, the Parties then reached agreement on Young Brothers' rate of return."[110] Specifically, the Parties stipulate to a cost of common equity of 14.01 percent, and a resulting rate of return of 10.76 percent, as follows:

Capital Component	Weight	Cost	Weighted Cost
Short-term debt	3%	5.63%	.17%
Current portion, Long-term debt	2%	6.86%	.14%
Long-term debt	40%	6.86%	2.74%
Common equity	55%	14.01%	7.71%
	100%		10.76%

The Parties explain that "[t]he agreed upon return on common equity and resulting overall rate of return of 10.76 percent represents a compromise between the Parties, taking into consideration the agreements reached on the differences for other Test Year revenue requirement projections."[111]

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[110]Decision and Order, Section II.A.2, above.

[111]Joint Supplement, Attachment B, at 40; see also Parties' response to PUC-IR-108. With respect to their stipulated cost of common equity, the Parties explain:

> During negotiations, the Parties agreed to a cost of common equity of 14.01 percent. This stipulated cost of common equity, the midpoint between 13.86 percent ([Young Brothers'] rebuttal analysis of the Consumer Advocate's proposal (YB-RT-500 at 7)) and [Young Brother's] original proposal of 14.16 percent (YB-DT-400 at 34), is within the broad range that [the Consumer Advocate's expert] concluded as being reasonable for [Young Brothers] (CA-T-3 at 4).

Joint Supplement, Attachment B, at 48.

Here, the Parties' stipulated capital structure closely approximates the capital structure previously approved by the commission in Young Brothers' most recent general rate case.[112] Also, the overall percentage difference between the Parties' initial positions on a fair rate of return is sixty-four basis points (10.84 percent vs. 10.2 percent), and the stipulated rate of return is thirty basis points less than Young Brothers' present authorized rate of return of 11.06 percent.

On balance, the stipulated rate of return should continue to encourage (rather than discourage) the appropriate level of investment in Young Brothers to enable the water carrier to embark on its ten-year strategic plan, while protecting the shippers' interests in paying no more than what is just and reasonable for reliable intrastate cargo transport service.[113] The commission finds that the stipulated rate of return is within the range of reasonableness recognized by the Court in In re Hawaii Elec. Light Co., Inc. In sum, the commission approves as fair the Parties' stipulated rate of return of 10.76 percent.

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[112]Specifically, a "capital structure consist[ing] of 2 per cent short-term debt, 3 per cent current portion of long-term debt, 40 per cent long-term debt, and 55 per cent common equity." In re Young Bros., Ltd., Docket No. 96-0483, Decision and Order No. 16008, filed on October 10, 1997, at 17. As acknowledged by the Parties, the "recommended capital structure is based on a 55 percent equity share, this percentage being consistent with [Young Brothers'] holding company's balance sheet and the Commission's decision in the 1997 general rate case proceeding. Decision and Order No. 16008 at 16-36." Joint Supplement, Attachment B, at 47.

[113]Concomitantly, this statement shall not be construed as the commission giving its affirmative approval or pre-approval of Young Brothers' ten-year strategic plan. Rather, the scope of this docket is limited to the requests made by Young Brothers' in its Application.

H.

Rate Design

As part of its Application, Young Brothers proposed to restructure its rates in order to achieve full compensatory pricing for all its lines of business. In Young Brothers' view: (1) compensatory pricing through rate restructuring is especially cogent in light of its commitment to continue LCL service until at least January 1, 2012 (except for LCL service to and from Kahului and Hilo, to which Young Brothers has committed to continuing until at least January 1, 2010); and (2) the cost of providing LCL service has historically been subsidized by revenue from its containerized service.

With respect to the Stipulation, the Parties explain that after settling the revenue, expense, allocation (interstate vs. intrastate), rate base, and rate of return issues, they "focused their attention on an acceptable rate design to provide a reasonable opportunity for [Young Brothers] to earn a Test Year [intrastate] revenue requirement of $68,893,418, representing a total revenue increase of $4,391,105, or approximately 7.51 percent over freight revenues at present rates."[114] In this regard, Young Brothers, as part of its Application, initially proposed to increase its rates for the LCL cargo categories (G-Vans, dry and reefer pallets, and dry and reefer mixed cargo) by twenty-four percent, in order to move such categories to break-even levels.

[114]Joint Supplement, Attachment B, at 51.

Nonetheless, "given the desire of the Parties to be responsive to community concerns regarding the level of increase necessary to establish compensatory levels in a single rate case, the Parties agree to a more moderate increase of 15 percent" for the LCL cargo categories.[115] In effect, the Parties concur that the percentage increase in rates for each cargo category should be applied in such a manner that gradually moves the LCL cargo categories toward compensatory rates.

The Parties' stipulated rate design is as follows:

Category	Percentage Increase
Containers	
Dry Containers (20-foot)	2.25%
Dry Containers (24-foot)	2.25%
Dry Containers (40/45-foot)	2.25%
Reefer Containers (20-foot)	4.5%
Reefer Containers (24-foot)	4.5%
Reefer Containers (40-foot)	4.5%
Straight-Load Racks	
Flatracks/Platforms	4.5%
Automobiles and RO/RO Cargo	
Automobiles	4.5%
RO/RO	0%

[115] Joint Supplement, Attachment B, at 52; see also In re Young Bros., Ltd., Docket No. 2006-0120 (withdrawal of Young Brothers' proposal to discontinue LCL cargo service to and from Kahului Harbor).

Category	Percentage Increase
LCL Cargo	
G-Vans	15%
Pallets (Dry)	15%
Pallets (Reefer)	15%
Mixed (Dry)	15%
Mixed (Reefer)	15%

The Parties conclude that, over time through reasonable adjustments, Young Brothers' rates should generally be designed to provide Young Brothers with the opportunity to earn its authorized rate of return from each cargo type, i.e., the principle of compensatory rates. Nonetheless, "[t]he Parties recognize that the rate design set forth in this Stipulation does not fully achieve this goal, but that the stipulated rates represent a moderate step toward achieving fully compensatory rates."[116]

At first blush, the Parties' stipulated rate design appears to disproportionately increase Young Brothers' LCL cargo rates, when compared to the percentage increases in the container, straight-load racks, and automobile cargo rates. Nonetheless, the commission's review of the pertinent data filed under partial confidential seal (specifically, the Parties' Exhibit B) confirms the Parties' representation that the stipulated rate design is intended to gradually migrate the LCL cargo rates closer to a cost-based level. The commission, thus, approves as reasonable the Parties' stipulated rate design.

[116]Joint Supplement, Attachment B, at 8.

I.

Fuel Price Adjustment Clause

The Consumer Advocate agrees with Young Brothers' proposal to implement a fuel price adjustment clause. Pages 44 to 49 and Exhibits C to E of the Joint Supplement, Attachment B, sets forth the methodology, terms, and conditions of the fuel surcharge agreed-upon by the Parties. Copies of these exhibits are attached to this Decision and Order.

Specifically, the Parties agree to:

1. Establish a fuel price adjustment clause to automatically increase or decrease its rates to reflect fluctuations in its diesel fuel costs whenever the price per gallon of such fuel increases by $0.15 or more above or decreases by $0.15 or more below the unit price included in Young Brothers' per gallon base intrastate rates established in this proceeding (the "base price of diesel fuel");

2. Implement Young Brothers' initial fuel price adjustment, effective as of the first day of the fourth month following the issuance of the commission's decision and order in this proceeding, based on the data from the three-month period following the issuance of the decision and order; and

3. Implement subsequent fuel price adjustments every three months thereafter (i.e., on a quarterly basis), <u>if</u> the trailing average of the delivered price of diesel fuel to Young Brothers for the three-month period immediately following the period upon which the preceding fuel price adjustment is based (the "Relevant Three-Month Period") is $0.15 or more above or

$0.15 or more below the base price of diesel fuel (the "FPA Threshold").

In addition, based on the Consumer Advocate's proposal, Young Brothers agrees to establish a monitoring plan, described as follows:

1. "The average price of fuel per gallon shall be the quotient of the total number of gallons of diesel fuel used during the Relevant Three-Month Period divided into [Young Brothers'] total cost for such diesel fuel during the Relevant Three-Month Period."[117] To determine whether Young Brothers may adjust its rates through the fuel price adjustment clause, Young Brothers shall use the worksheet attached as Exhibit C to the Stipulation and attach all such worksheets for a given calendar to the Annual Fuel Price Reconciliation (described below).

2. "Upon determination of the variance, if any, from the average price of fuel used in this proceeding, and if the FPA Threshold is met, [Young Brothers] will notify the Commission as to the [fuel price adjustment] charge, if any, that will be effective for at least the next three months (the FPA Filing)."[118] Young Brothers' FPA Filing will be made prior to the effective date of any fuel price adjustment.

3. Young Brothers' base price of diesel fuel, as used in Young Brothers' Test Year expenses in this proceeding, shall be adjusted to equal the average price per gallon of diesel fuel

[117]Joint Supplement, Attachment B, at 55.

[118]Joint Supplement, Attachment B, at 55.

for the last three full months preceding the Stipulation, which is $2.16 per gallon.

4. Young Brothers may allocate its diesel fuel costs between its interstate and intrastate operations, as reflected in the Parties' Exhibit D; provided that Young Brothers, within a month following the filing of its annual report with the commission, files a reconciliation of fuel price adjustments based on a calendar year for the purpose of verifying the accuracy of such allocations (the "Annual Fuel Price Reconciliation").

5. The Annual Fuel Price Reconciliation shall be used for informational purposes only, in evaluating the effectiveness of the fuel surcharge. "The reconciliation is not intended to result in immediate or automatic regulatory action. Depending on the results of the reconciliation, however, the Parties reserve the right to file an application with the Commission, if not initiated under the Commission's own motion, to address any significant under- or over-recovered amounts."[119]

HRS § 271G-17(b) and HAR § 6-65-40(b)(1) provide that any changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change. Hence, these provisions implicitly recognize a water carrier's authority to establish a fuel price adjustment clause, subject to the commission's approval.

[119] Joint Supplement, Attachment B, at 58.

In In re Young Bros., Ltd., Docket No. 05-0302, the commission denied Young Brothers' request to independently establish a fuel price adjustment clause, in the absence of a general rate case application.[120] Thus, in this proceeding, Young Brothers seeks to implement, with the Consumer Advocate's concurrence, a fuel price adjustment clause.

The purpose of the fuel price adjustment clause is to pass onto shippers increases of $0.15 or more above (costs) or decreases of $0.15 or more below (savings), the per gallon base price of diesel fuel. In other words, the Parties' proposed fuel surcharge will take effect only if the cost of diesel fuel increases by $0.15 or more above the per gallon base price of diesel fuel, or if the cost of diesel fuel decreases by $0.15 or more below the per gallon base price of diesel fuel.

Young Brothers seeks to implement a fuel surcharge as "a means to mitigate the possibility of rapid and unforeseen changes in diesel fuel prices given the recent history of volatility in these prices."[121] Based on the data provided by Young Brothers, it is likely that while the cost of diesel fuel will increase, rather than decrease over the established per gallon base price,[122] Young Brothers is prohibited from assessing the fuel surcharge until the $0.15 per gallon threshold is reached. Moreover, Young Brothers agrees with the Consumer Advocate's proposal to implement the Annual Fuel Price

[120]Docket No. 05-0302, Decision and Order No. 22154, filed on December 1, 2005.

[121]YB-DT-200, at 6.

[122]See YB-DT-200.

Reconciliation monitoring plan, for the purpose of evaluating the effectiveness of the fuel surcharge. Lastly, as noted by Young Brothers, the commission, in In re Hawaii Superferry, Inc., Docket No. 04-0180, approved the implementation of a fuel surcharge for Hawaii Superferry, Inc.[123]

The commission approves as reasonable the implementation of the fuel price adjustment clause agreed-upon by the Parties, and their Annual Fuel Price Reconciliation monitoring plan.

J.

Other Tariff Changes

In addition to the change in rates set forth in the Rate Design section, above, Young Brothers proposed certain revisions to Tariff 5-A that "reflect editorial and cosmetic changes to conform terms and provisions that have undergone changes from time to time since the original issuance of Tariff 5-A in 1995."[124] Young Brothers also sought to: (1) revise the definitions of "island agricultural product" and "automobiles" in its Tariff 5-A; (2) increase its storage fees (non-refrigerated and refrigerated cargo) by a factor of 2.5;

[123] See In re Hawaii Superferry, Inc., Docket No. 04-0180, Decision and Order No. 21524, filed on December 30, 2004; and Hawaii Superferry, Inc.'s Tariff 1A, Section II.E, Fuel Surcharge.

[124] Young Brothers' Application, at 79. The specific changes are set forth in Exhibit YB-Ex-1 of its Application. See also Young Brothers' response to CA-IR-41, and Attachment A thereto (Young Brothers' proposed revised tariff sheets, based on the Consumer Advocate's review).

(3) increase its minimum bill of lading by twenty-four percent; and (4) establish a minimum charge for platforms.

1.

Non-Substantive Tariff Changes

The Parties agree to certain non-substantive changes to the language used in Tariff 5-A.[125] The commission approves as reasonable the Parties' agreed-upon non-substantive changes to Tariff 5-A.

2.

Island Agricultural Product

Young Brothers, with the Consumer Advocate's concurrence, agrees to withdraw its proposal to redefine "island agricultural product," and instead, intends to collaborate with the Consumer Advocate and other interested stakeholders, including the Hawaii Farm Bureau Federation, in redefining the term "island agricultural product," in order to minimize disputes with shippers over what particular commodity qualifies for the island agricultural product discounted rate, Commodity Rate DA.[126]

The commission approves Young Brothers' request to withdraw its proposal to redefine the term "island agricultural product."

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[125]Parties' response to PUC-IR-105. For example, the Parties agree to change "will be" to "is," and "which" to "that" in Rule 10 of Tariff 5-A.

[126]See also Young Brothers' response to CA-IR-38 (Young Brothers' discussions with the Hawaii Farm Bureau Federation).

Automobiles

Tariff 5-A presently defines the term "automobile" as follows:

> Any four-wheeled, rubber tired, self-propelled, passenger motor vehicle in operable condition designed for the carriage of not more than 10 passengers on public streets and highways.

Tariff 5-A, Ninth Revised Page No. 42.

The Parties agree to redefine the term "automobile" to now read as follows:

> For rating purposes, an "automobile" is any four-wheeled, rubber tired, self-propelled motor vehicle that is in operable condition designed for transport on public streets and highways and that does not exceed 7 feet in height at the highest point, 8 feet in width at the widest point, or 17 feet in length at the longest point. All other vehicles shall be rated as RR (Roll-on/Roll-off) or as general cargo, whichever is applicable.

Joint Supplement, Attachment B, at 60; see also Young Brothers' response to CA-IR-39, Attachment A.

The Parties cite to the following factors in support of their agreed-upon new definition for automobiles: (1) avoiding arguments that may arise if certain consumer passenger vehicles are classified as RO/RO cargo; (2) including virtually all passenger vehicles in the automobile classification by increasing the length limitation to seventeen feet; and (3) recognizing that "vehicles over 7 feet in height will exceed the height clearance in the multi-floored automobile section of [Young Brothers'] RO/RO barge and those that exceed 8 feet in width will be too wide for optimal use of the floor space of [Young Brothers'] barges."[127]

Young Brothers' existing definition of automobile in its Tariff 5-A does not describe the dimension limitations (height, width, and length) of an automobile. This vagueness, Young Brothers claims, leads to disputes with customers as to whether a particular motor vehicle qualifies for the automobile Commodity Rate AU. Thus, Young Brothers, as part of its Application, initially proposed to clarify the term automobile to mean a motor vehicle that does not exceed seven feet in height, eight feet in width, and sixteen feet in length.

The Parties, as a result of their Stipulation, agree to extend the length of an automobile from sixteen to seventeen feet, in order to include more types and models of motor vehicles that qualify for the automobile classification and corresponding Commodity Rate AU. This seventeen feet limitation, the commission notes, is consistent with the vehicular classification set forth in Hawaii Superferry, Inc.'s Tariff 1A, Appendix B, page 32, governing "Passenger Autos, Small SUVs, Other[s] up to 17' long[.]"[128]

Young Brothers' efforts to clarify the term automobile is intended to minimize the vagueness and disagreements with shippers over what types and models of motor vehicles qualify for Commodity Rate AU. The commission approves as reasonable the Parties' agreed-upon definition of automobile.

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[127]Joint Supplement, Attachment B, at 60.

[128]Hawaii Superferry, Inc.'s Tariff 1A, Appendix B, at 32.

4.

Storage Fees

With respect to "free time," Tariff 5-A presently provides that: (1) a customer has two business days following the day that non-refrigerated cargo is discharged from Young Brothers' barge to pick-up the customer's goods without being assessed a storage fee; and (2) a customer has until the close of business on the day that refrigerated cargo is discharged from Young Brothers' barge to pick-up the customer's goods without being assessed a storage fee.[129] Young Brothers assesses its customers who do not pick-up their goods within the free time period a storage fee (non-refrigerated and refrigerated cargo).[130] Young Brothers, as part of its Application, sought to increase its storage fees to encourage and motivate its customers to promptly pick-up their goods, given the limited availability of harbor space at the port facilities.

The Parties, as a result of their Stipulation, agree to increase the storage fees for non-refrigerated and refrigerated cargo by a factor of two. In support thereto, the Parties explain:

> The Parties agree that raised fees might act as a disincentive to late pick-up of cargo and use of [Young Brothers'] facility as an extension of a consignee's own storage space. The disincentive would also benefit the vast majority of consignees who pick up their cargo on time but are hampered by increased congestion and would be prejudiced if [Young Brothers] seeks to instead shorten free time to mitigate the space shortage issue. The Parties further agree that, if the proposed change

[129] Tariff 5-A, Rules 170 and 171.

[130] Tariff 5-A, Rules 170 and 171.

> in storage fees results in the intended purpose, there may be a decrease in the number of fees collected and that a reasonable increase in this fee might be revenue-neutral or may even result in less storage fees collected than historically recorded.

Joint Supplement, Attachment B, at 62-63.

The commission recognizes the shortage of harbor space at the port facilities statewide, and believes that the proposed increase in the storage fees will encourage Young Brothers' customers to timely pick-up their cargo, and avoid utilizing the overcrowded port facilities as a temporary storage area. The commission approves as reasonable the Parties' agreement to increase Young Brothers' storage fees by a factor of two.

5.

Increase in the Minimum Charge Per Bill of Lading

All shipments of cargo by Young Brothers are made with a physical document known as a bill of lading.[131] Rule 100 of Tariff 5-A states:

> MINIMUM CHARGE - PER BILL OF LADING
>
> Except as otherwise provided in individual items of this tariff, the minimum freight charge per bill of lading will be $24.43. The minimum freight charge does not include tax, wharfage, or insurance. All charges must be prepaid or guaranteed. Freight charges, on which prepayment is required, may on approval by Carrier, be forwarded on collect basis by the guarantee of shipper that all charges will be paid by consignee or owner of the cargo.

Tariff 5-A, Rule 10.

[131] See Tariff 5-A, Rules 10, 30, 100, and 200.

Young Brothers initially proposed to increase its minimum charge per bill of lading by twenty-four percent. Now, for purposes of compromise, the Parties agree to increase the minimum charge per bill of lading by fifteen percent.[132]

"Costs associated with the bill of lading process include costs for such activities as booking customer reservations, preparing bills of lading, inspecting and accepting cargo, computing and collecting freight charges, notifying customers of cargo arrival, tracing cargo, and investigating customer complaints."[133] Consistent with the applicable operating expenses approved by the commission in this Decision and Order, the commission approves as reasonable the Parties' agreement to increase the minimum charge per bill of lading by fifteen percent.

6.

Increase in the Minimum Charge for Platforms

"Young Brothers and the Consumer Advocate agree to the minimum charges for platforms proposed by YB in its Application - $175 for 20-foot platforms and $350 for 40-foot platforms[.]"[134] The Parties agree to these minimum charges for platforms based on the following explanation in Young Brothers' Application:

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[132]Parties' response to PUC-IR-106.

[133]Dockets No. 7398 and No. 7506 (consolidated), Decision and Order No. 12479, filed on June 30, 1993, at 15-16.

[134]Parties' response to PUC-IR-107.

> Operationally, platforms require handling comparable to containers and flatracks (which are assessed at container rates). Platforms, however[,] are rated on a per cubic foot basis. As a result, charges for YB's carriage of platform cargo are often considerably lower than that for containers or flatracks. . . .

Parties' response to PUC-IR-107 (quoting Young Brothers' Application, at 74; and YB-DT-500, at 17 - 18).

The commission, based on Young Brothers' rationale, approves as reasonable the Parties' agreement in this regard.

K.

Commission's Approval

Young Brothers initially sought an average, overall rate increase of 10.7 percent, with the proposed rate increases ranging from zero to twenty-four percent for certain types of cargo, with the largest percentage increase applied to LCL cargo. Upon the completion of the discovery process, including the Parties' review and analysis of their respective positions, the Parties ultimately reached a global settlement on all issues. As a result, the Parties agree to an increase in Young Brothers' intrastate freight revenues of 7.51 percent, with rate increases ranging from zero to fifteen percent, with a latter amount to be applied to LCL cargo.

On balance, the Parties' stipulated increase in its intrastate freight revenues of $4,391,105 provides Young Brothers with a reasonable opportunity to earn its Test Year intrastate revenue requirement of $68,893,418. The commission approves the Parties' Stipulation, consistent with the terms of this Decision and Order. Nonetheless, the methodologies used by the Parties in reaching their global settlement, as well as the commission's approval of the Stipulation, may not be cited as precedent by any parties in future commission proceedings.

In sum, the commission answers in the affirmative the issues set forth in Exhibit 1 of Order No. 23311.

III.

Summary of Findings and Conclusions

Based on the foregoing, the commission finds and concludes:

1. The operating revenues and expenses for the Test Year, as set forth in Exhibits I and II, attached, are reasonable.

2. Young Brothers' use of an average Test Year rate base is reasonable, and its Test Year average depreciated rate base, as reflected in Exhibits I and II, attached, is likewise reasonable.

3. Young Brothers' rate of return of 10.76 percent is fair.

4. For its intrastate operations, Young Brothers is entitled to: (A) an increase in its intrastate freight revenues of $4,391,105, or approximately 7.51 percent over intrastate revenues at present rates; and (B) total intrastate operating revenues of $68,893,418.

5. The Parties' stipulated rate design is reasonable.

6. The Parties' agreement to establish and implement a fuel price adjustment clause is reasonable.

7. The other tariff changes agreed upon by the Parties, as discussed in Section II.J, Other Tariff Changes, above, are reasonable.

IV.

Orders

THE COMMISSION ORDERS:

1. The Parties' Stipulation, filed on July 20, 2007, as further supported by the Joint Supplement, is approved, consistent with the terms of this Decision and Order.

2. Young Brothers may increase its rates to produce a total annual intrastate revenue increase of $4,391,105, or approximately 7.51 percent, as shown on Exhibit I, attached, representing an increase in Young Brothers' intrastate revenue requirement to $68,893,418 for the Test Year.

3. No later than October 22, 2007, Young Brothers shall file its revised tariff sheets and rate schedules for the commission's review and approval, with copies served upon the Consumer Advocate. Said filing, which is intended to implement the increases in rates and charges and other tariff changes authorized by Section II of this Decision and Order, shall not take effect without the commission's affirmative approval.

4. The failure to comply with the requirements noted in Ordering Paragraph No. 3, above, may constitute cause to void

this Decision and Order, and may result in further regulatory action as authorized by State law.

DONE at Honolulu, Hawaii OCT 1 2 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By: John E. Cole
John E. Cole, Commissioner

By: ____________________
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel
2006-0396.ac

DOCKET NO. 2006-0396

YOUNG BROTHERS, LIMITED
RESULT OF OPERATIONS
TEST YEAR 2007

	PRESENT RATES			INTRASTATE	
	TOTAL	**INTERSTATE**	**INTRASTATE**	**ADDITIONAL AMOUNT**	**APPROVED RATES**
Operating Revenues:					
Freight Revenue	$58,483,422	$0	$58,483,422	$4,391,105	$62,874,527
Interstate Revenue	27,456,297	27,456,297			
Cargo Insurance Revenue	2,758,658	128,948	2,629,710		2,629,710
Miscellaneous Revenue	1,686,396	0	1,686,396		1,686,396
Stevedore Revenue	569,237	48,101	521,136		521,136
Tug Revenue	2,150,426	968,777	1,181,649		1,181,649
Total Operating Revenues	$93,104,436	$28,602,123	$64,502,313	$4,391,105	$68,893,418
Operating Expenses:					
Cargo Handling Expenses	35,163,314	8,236,034	26,927,280		26,927,280
Maintenance Department Expenses	(122,607)	(46,069)	(76,538)		(76,538)
Voyage Expenses	30,259,910	9,724,810	20,535,100		20,535,100
Administrative & General Expenses	7,530,326	2,151,940	5,378,386		5,378,386
Taxes Other Than Income	663,520	203,836	459,684		459,684
Depreciation	10,569,310	2,754,381	7,814,929		7,814,929
Total Operating Expenses	84,063,773	23,024,932	61,038,841		61,038,841
Net Operating Income Before Income Taxes	9,040,663	5,577,191	3,463,472	4,391,105	7,854,577
Income Taxes (38.9098%)	3,517,704	2,170,074	1,347,630	1,708,570	3,056,200
Net Income	$5,522,959	$3,407,117	$2,115,842	$2,682,535	$4,798,377
Average Depreciated Rate Base	64,108,891	19,242,082	44,866,809		44,606,597
Rate of Return			4.72%		10.76%

EXHIBIT I

DOCKET NO. 2006-0396

YOUNG BROTHERS, LIMITED
AVERAGE DEPRECIATED RATE BASE
TEST YEAR 2007

	1/1/2007	12/31/2007	PRESENT RATES TEST YEAR	ADJUSTED TEST YEAR
Average Plant in Service	$121,503,682	$150,968,982	$136,236,332	$136,236,332
Average Accumulated Depreciation	71,757,997	76,299,757	73,861,319	74,028,877
Average Depreciation Plant			62,375,013	62,207,455
Additions:				
Average Materials & Supplies - Inventory	2,998,557	2,998,557	2,998,557	2,998,557
Deduct:				
Average Deferred Income Taxes			3,252,574	3,252,574
Average Unamortized Investment Tax Credit			1,933,768	1,933,768
Total Deductions			5,186,341	5,186,341
Average Depreciated Rate Base without Working Cash			60,187,229	60,019,671
Working Cash			3,921,663	3,724,896
Average Depreciated Rate Base			$64,108,891	$63,744,566

DOCKET NO. 2006-0396

YOUNG BROTHERS, LIMITED
WORKING CASH CALCULATIONS
TEST YEAR 2007

	Lag Days	Present Rates Expenses	Present Rates Working Cash	Adjusted Test Year Expenses	Adjusted Test Year Working Cash
Labor:					
Cargo Handling		$13,905,412		$13,905,412	
Maintenance		3,117,298		3,117,298	
Voyage		4,825,158		4,825,158	
Administrative		1,539,358		1,539,358	
	31	23,387,226	$1,986,312	23,387,226	$1,986,312
Other Operating Expenses:					
Cargo Handling Expenses		35,040,707		35,040,707	
Voyage Expenses		30,259,910		30,259,910	
Administrative & General Expenses		7,530,326		7,530,326	
Real Property Taxes		144,396		144,396	
Bad Debt		(30,000)		(30,000)	
		72,945,339		72,945,339	
Less Labor		(23,387,226)		(23,387,226)	
	17	49,558,113	2,308,186	49,558,113	2,308,186
Revenue Taxes:					
PSC Taxes		0		0	
PUC Fees		296,496		296,496	
General Excise Tax		222,628		222,628	
	13	519,124	18,489	519,124	18,489
Income Taxes:					
Income Taxes		3,520,000		5,230,000	
Less Change in Deferred Taxes		(119,207)		(119,207)	
	(42)	3,400,793	(391,324)	5,110,793	(588,091)
Total Working Cash			$3,921,663		$3,724,896

DOCKET NO. 2006-0396

YOUNG BROTHERS, LIMITED
AVERAGE DEFERRED INCOME TAXES
AVERAGE UNAMORTIZED INVESTMENT TAX CREDIT
TEST YEAR 2007

Deferred Income Taxes

Month	Depreciation Book	Depreciation Tax	Difference	Taxes	Unamortized ITC
December 2006				$3,192,970	$1,293,367
2007 Depreciation	$10,650,778				
Assets Prior to 2007		5,772,393			
2007 Assets		3,415,596			
	$10,650,778	$9,187,989	$1,462,789	569,168	
2007 Amortization				82,726	(238,761)
2007 Fixed Asset Additions				(532,687)	1,519,562
December 2007				$3,312,177	$2,574,168
Average				$3,252,574	$1,933,768

Parties'
Exhibit C

MONTHLY REPORT AND FUEL PRICE ADJUSTMENT SCHEDULE

The Parties set forth below the manner in which Applicant shall file its Monthly Report and such subsequent Fuel Price Adjustments (using the first thirteen months following the Commission's decision, as requested in this proceeding, as an example):

DATE	**EVENT / DOCUMENT TO BE FILED**
August 31, 2007	Parties' requested date for Commission Decision and Order in this Docket (the "***D&O***")
Last day of the first month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the second month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the third month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Fourth month following the D&O	**Applicant may make its FPA Filing and apply Fuel Price Adjustment to all commodity rates (assuming the D&O is issued on August 31, 2007, the FPA would be based on average cost of fuel during the months of September 2007, October 2007 and November 2007, being the first, second and third months following the D&O).**
Last day of the fourth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the fifth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the sixth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).

Current Fuel Cost Per $1.00 Revenue

	Gallons Consumed Per Each $1.00 of Revenue	*Multiplied by* Average Cost of Fuel Per Gallon		Current Fuel Cost Per $1.00 Revenue
Relevant Three-Month Period: ______	***c***	x ___	=	***d***

The "Average Cost of Fuel Per Gallon" shall be quotient of the total number of gallons of diesel fuel used during the Relevant Three-Month Period divided by Applicant's total cost for such diesel fuel during the Relevant Three Month Period.

Fuel Price Adjustment Percentage / Recovery per $1.00 of Revenue

Current Fuel Cost Per $1.00 Revenue for Relevant Three Month Quarter	*Less* Base Fuel Cost Per $1.00 Revenue Based on Base Price of Diesel Fuel of $2.16/gal.		**Fuel Price Adjustment Percentage / Recovery per $1.00 of Revenue**
d	-	=	

Parties'
Exhibit D
FUEL COST WORKSHEET

Gallons of Diesel Fuel Consumed in Intra-State Operations

Relevant Three-Month Period: ______	Total Gallons Consumed in Interstate and Intra-State Operations	*Multiplied by* Percentage Consumed in Intra-State Operations	Gallons Consumed in Intra-State Operations
Cargo Handling (Diesel Fuel Used by Hi-Lifts	______	x ______	= ______
Voyage Costs (Diesel Fuel Used by Tugs)	______	x ______	= ______
Total Gallons Consumed for Intra-State Operations			***a***

Amount of Intra-State Revenue = *b*

Gallons Consumed Per Each $1.00 Of Intra-State Revenue

	Total Gallons Consumed for Intra-State Operations	*Divided by* Total Intra-State Revenue	Gallons Consumed Per Each $1.00 Of Intra-State Revenue
Relevant Three-Month Period: ______	***a***	/ ***b***	= ***c***

Seventh month following the D&O	**Applicant may make its FPA Filing and apply Fuel Price Adjustment to all commodity rates (assuming the D&O is issued on August 31, 2007, the FPA would be based on average cost of fuel during the months of December 2007, January 2008 and February 2008, being the fourth, fifth and sixth months following the D&O)**
Last day of the seventh month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the eighth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the ninth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Tenth month following the D&O	**Applicant may make its FPA Filing and apply Fuel Price Adjustment to all commodity rates (assuming the D&O is issued on August 31, 2007, the FPA would be based on average cost of fuel during the months of March 2008, April 2008, May 2008, being the seventh, eighth and ninth months following the D&O)**
Last day of the tenth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the eleventh month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Last day of the twelfth month following the D&O	Regular monthly financial and statistical report is due pursuant to HAR §6-65-56(a)(1).
Thirteenth month following the D&O	**Applicant may make its FPA Filing and apply Fuel Price Adjustment to all commodity rates (assuming the D&O is issued on August 31, 2007, the FPA would be based on average cost of fuel during the months of June 2008, July 2008 and August 2008, being the tenth, eleventh and twelfth months following the D&O)**

Parties'
EXHIBIT E

SCHEDULE FOR FUEL RECOVERY/(LOSS)

Review Year: January to December ____

Gallons of Fuel Consumer in Intra-State Operations

	Total Gallons Consumed in Consolidated (Interstate and Intra-State) Operations		Percentage Consumed in Intra-State Operations		Gallons Consumed in Intra-State Operations
Cargo Handling Fuel Costs (Shore-side)	**A**	x	**B**	=	**C**
Voyage Fuel Costs (Marine)	**D**	x	**E**	=	**F**
Total Gallons Consumed in Intra-State Operations					**C + F**

Fuel Cost Based on Gallons Consumed

	Fuel Price Per Gallon		Gallons Consumed in Intra-State Operations		Fuel Costs
Fuel Costs Based on Average Fuel Price	**G**	x	**C + F**	=	**H**
Fuel Costs Based on Base Price	**I**	x	**C + F**	=	**J**

SCHEDULE FOR FUEL RECOVERY/(LOSS)

Review Year: January to December ____

Fuel-Related Revenue Collected

	General Freight Revenue Portion Covering Fuel Costs		Intra-State FPA Revenue		Total Fuel-Related Revenue
Fuel-Related Revenue	**J**	+	**K**	=	**M**

Fuel Cost Recovery/(Loss)

	Review Year Revenue		Review Year Cost		Recovery or Loss
Over-Recovery or Under-Recovery in Review Year	**M**	-	**H**	=	**N or (N)**

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23714 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: OCT 12 2007